THE

PENAL CODE OF ALABAMA;

PREPARED BY

GEO. W. STONE AND J. W. SHEPHERD,

AND

Adopted by the General Assembly at the Session of 1865-6;

TOGETHER WITH THE

OTHER CRIMINAL LAWS NOW IN FORCE.

PUBLISHED BY AUTHORITY.

MONTGOMERY:
REID & SCREWS, STATE PRINTERS.
1866.

TABLE OF CONTENTS.

ACT TO ESTABLISH A NEW PENAL CODE..... 5
OTHER SPECIAL ACTS OF THE LEGISLATURE..... 9
ANALYSIS OF PENAL CODE..... 15
PENAL CODE..... 17
APPENDIX—CONTAINING FORMS OF INDICTMENTS.... 206
INDEX 215

AN ACT

TO ESTABLISH A NEW PENAL CODE.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the Penal Code prepared by the commissioners, Geo. W. Stone and Jno. W. Shepherd, and reported to the present general assembly, be, and the same is hereby, adopted as part of the criminal laws of this State.

SEC. 2. *Be it further enacted*, That three thousand copies of said Penal Code, together with this act, and the other criminal laws of the State which remain unrepealed thereby, be printed in pamphlet form, at as early a day as may be practicable, under the superintendence of a competent person, to be appointed by the governor, whose duty it shall be, to arrange and methodize said unrepealed laws as part of said Penal Code; to prepare head notes, side notes, and a complete index to the several sections composing the entire Penal Code, and to correct the proof-sheets; and who shall receive for his services such compensation as the governor may deem just and reasonable, to be paid out of the contingent fund.

SEC. 3. *Be it further enacted*, That said Penal Code, when printed, shall be distributed by the secretary of State, or under his direction, as follows: To the members of the present general assembly, one copy each; to the judges of the supreme court, circuit courts, city courts of Mobile, Montgomery, Selma, and Eufaula, chancellors, and judges of probate, one copy each; to the clerks of the circuit and city courts throughout the State, and the several justices of the peace, one copy each; to the comptroller of public accounts, State treasurer, attorney

general, and solicitors, one copy each; to the executive office, five copies; to the marshal and librarian of the supreme court, for the use of the supreme court and State libraries, ten copies; and the residue shall be sold by the secretary of State, on account of the State, at a price which shall be sufficient to reimburse the State for the cost of printing and publishing the same.

SEC. 4. *Be it further enacted*, That the following laws be, and they are hereby, absolutely repealed—that is to say, article seven, chapter two, title one, part four, of the Code of Alabama, being from section 3295 to section 3300, both inclusive; also, article ten of the same chapter, being from section 3305 to section 3335, both inclusive; also, the first, second, third, fourth, and fifth chapters, of title two, part four, of the Code of Alabama, being from section 3339 to section 3435, both inclusive; also, the seventh, eighth, and ninth chapters of the same title, being from section 3497 to section 3573, both inclusive; also, the eleventh and twelfth chapters of the same title, being from section 3619 to section 3666, both inclusive; also, the fifteenth chapter of the same title, being from section 3699 to section 3707, both inclusive; and sections 3863, 3864, 3865, 3794, 3795, 3796, 3797, and 3798 of the Code of Alabama.

SEC. 5. *Be it further enacted*, That the following laws be, and the same are hereby repealed—that is to say, chapter one, and the first, second, third, fourth, fifth, and sixth articles of chapter two, title one, part four, of the Code of Alabama, being from section 3069 to section 3294, both inclusive; also, sections 3301, 3302, 3303, 3304, 3792, 399, 1058, 1059, 1111, 1113, 1115, 1118, and 1121 of the Code of Alabama; also, the act approved February 5, 1856, entitled "An act to prevent more effectually the commission of the offenses of burglary and theft in this State;" also, the act approved February 15, 1856, entitled "An act to amend section 3222 of the Code of Alabama;" also, the act approved December 17, 1855, entitled "An act for the protection of telegraph lines and for other purposes;" also, the act approved February 5, 1856, entitled "An act to prevent the destruction of fish;" also, the act approved February 15, 1856, entitled "An act to prevent gambling on steamboats;" also, the act approved February 17, 1854, entitled "An act to prevent betting at pool-tables and bil-

liard-tables;" also, the act approved February 15, 1860, entitled "An act to amend the criminal laws of this State;" also, the act approved February 2, 1860, entitled "An act more effectually to prevent the crime of incest;" also, the act approved February 21, 1860, entitled "An act to prevent the game of keno and other games;" also, the act approved December 15, 1859, entitled "An act to amend section 399 of the Code;" also, the act approved February 16, 1860, entitled "An act to amend section 3254 of the Code of Alabama;" also, the act approved February 24, 1860, entitled "An act to amend section 3249 of the Code"; also, the act approved February 21, 1860, entitled "An act to prevent the unauthorized sale of lottery tickets in the State of Alabama;" also, the act approved February 17, 1860, entitled "An act to prevent the adulteration and sale of adulterated liquors;" also, the act approved February 16, 1860, entitled "An act to protect females from insult and injury at public assemblages;" also, the act approved February 6, 1858, entitled "An act to regulate the duties and liabilities of railroad companies in this State;" also, the act approved January 27, 1858, entitled "An act to amend section 3500 of the Code of Alabama;" also, the act approved January 16, 1858, entitled "An act to amend the criminal law in relation to rape, incest, and adultery;" also, the act approved February 8, 1858, entitled "An act to prevent betting at ten-pins;" also, the act approved February 16, 1858, entitled "An act to prevent nuisances and illegal trafficking with slaves;" also, the act approved January 20, 1858, entitled "An act to prevent the adulteration of liquors, &c.;" also, the act approved January 31, 1861, entitled "An act to regulate the hunting of wild hogs;" also, the act approved December 3, 1863, entitled "An act to prevent gaming in this State;" also, the act approved October 7, 1864, entitled "An act to punish certain offenses therein named;" and all and singular the other laws, and parts of laws, heretofore enacted, which in any manner conflict with the provisions of the Penal Code by this act adopted, in reference to the definition or punishment of any public offenses. *Provided*, however, That nothing in this section contained shall affect any prosecution now pending, or which may be hereafter commenced, for any public offense heretofore committed, or which may be hereafter committed at any

time prior to the day on which said new Penal Code shall go into effect, as by this act provided.

SEC. 6. *Be it further enacted*, That so soon as said new Penal Code shall have been printed, and delivered to the secretary of State, as by this act provided, it shall be the duty of the governor to publish his proclamation, in such newspapers throughout the State as he may select, appointing a day, not less than thirty, nor more than sixty days from the date of said proclamation, from and after which said new Penal Code and this act shall go into effect and become operative.

SEC. 7. *Be it further enacted*, That the manuscript copy of said new Penal Code, so soon as the same shall have been printed, shall be deposited in the office of the secretary of State, and be preserved for future reference.

Approved, February 23, 1866.

NOTE.—It was the intention of the legislature, as shown by the second section of the foregoing act, that all the criminal laws of the State now of force should be incorporated, in their appropriate places, in the new Penal Code by that act adopted. So far as practicable, this has been done. But several acts of the late session are so inconsistent with some provisions of the Penal Code, that it has been found impossible to reconcile them; and it is equally impossible to determine, in advance of a judicial decision of the question, which of these conflicting laws must prevail. Formerly, there was but little difficulty in such cases, the rule of construction giving effect to the law of later date. But, under the provisions of the revised constitution, (Art IV, sec. 2,) it is doubtful whether that rule will hereafter be recognized. For these reasons, the several laws referred to are herewith published in full, with the dates of their approval respectively.

Montgomery, Ala., April 16, 1866. J. W. SHEPHERD.

AN ACT the more effectually to prevent the offenses of grand larceny, arson, and burglary.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That from and after the passage of this act, any person or persons who shall be guilty of the offense of grand larceny, arson, or burglary, on conviction thereof, shall suffer death, or be imprisoned in the penitentiary for any period not less than five years, at the discretion of the jury trying the same.

Approved, December 15, 1865.

AN ACT to authorize justices of the peace to take cognizance of and try cases of misdemeanor.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That justices of the peace may take cognizance of and try all cases of misdemeanor, except cases of gaming and violations of the revenue laws.

Approved, January 20, 1866.

AN ACT to regulate proceedings before justices of the peace in cases of misdemeanor cognizable before them.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That in all cases of misdemeanors cognizable before a justice of the peace, upon affidavit made of the guilt of the accused, the justice before whom the same is made shall issue his warrant for the arrest of the accused, which shall be executed by any constable or sheriff of the county, who shall bring him before such justice with all convenient dispatch.

SEC. 2. *Be it further enacted*, That the accused, when brought before such justice, shall have the right to a trial (if he demand the same) by a jury to be composed of six jurors; and it shall be the duty of the justice, on the demand of the accused, to summon, or cause to be summoned, such jury for the trial of the accused.

SEC. 3. *Be it further enacted*, That the justice before whom the accused may be brought for trial, may, for good cause shown, adjourn the trial from time to time, as may be necessary, not exceeding ten days at one time.

SEC. 4. *Be it further enacted*, That in all cases where

the accused may be found guilty, he shall have the right of appeal to the next court sitting for the county having general jurisdiction. The accused, before he shall be allowed to take such an appeal, shall enter into bond, with sufficient surety, to be approved by the justice, and in such sum as may be prescribed by him, conditioned that the accused shall personally appear, at the term of the court to which the appeal may be taken, and that he shall attend the same, to answer to the charge against him, from day to day, and from term to term of said court, until he be discharged therefrom by due course of law.

SEC. 5. *Be it further enacted*, That in rendering the judgments in said cases, and executing the judgments and convictions thereof, and collecting the fines under this act, the said justices shall be governed by the same laws, rules and regulations, which are applicable to the circuit courts in this State in criminal cases.

Approved, January 20, 1866.

AN ACT to amend section 3794 of the Code, relating to vagrants.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That section 3794 of the Code, which reads as follows: "The following persons are vagrants," be amended by adding the following: "Any runaway, stubborn servant or child; a common drunkard, and any person, who, depending on his labor, habitually neglects his employment."

Approved, December 15, 1865.

AN ACT concerning vagrants and vagrancy.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the commissioners' court of any county in this State may purchase, rent, or provide such lands, buildings and other property as may be necessary for a poor-house, or house of correction for any such county, and may appoint suitable officers for the management thereof, and make all necessary by-laws, rules and regulations for the government of the inmates thereof, and cause the same to be enforced; but in no case shall the punishment inflicted exceed hard labor, either in or out of said house; the use of chain-gangs, putting in stocks, if necessary, to prevent escapes; such reasonable

correction as a parent may inflict upon a stubborn, refractory child; and solitary confinement for not longer than one week, on bread and water; and may cause to be hired out such as are vagrants, to work in chain-gangs or otherwise, for the length of time for which they are sentenced; and the proceeds of such hiring must be paid into the county treasury, for the benefit of the helpless in said poor-house, or house of correction.

SEC. 2. *Be it further enacted*, That the following persons are vagrants in addition to those already declared to be vagrants by law, or that may hereafter be so declared by law: a stubborn or refractory servant; a laborer or servant who loiters away his time, or refuses to comply with any contract for a term of service without just cause; and any such person may be sent to the house of correction in the county in which such offense is committed; and for want of such house of correction, the common jail of the county may be used for that purpose.

SEC. 3. *Be it further enacted*, That when a vagrant is found, any justice of the peace of the county must, upon complaint made upon oath, or on his own knowledge, issue his warrant to the sheriff or any constable of the county, to bring such person before him; and if, upon examination and hearing of testimony, it appears to the justice that such person is a vagrant, he shall assess a fine of fifty dollars and costs against such vagrant; and in default of payment, he must commit such vagrant to the house of correction, or, if no such house, to the common jail of the county, for a term not exceeding six months, and until such fine, costs and charges are paid, or such party is otherwise discharged by law. *Provided*, That when committed to jail under this section, the commissioners' court may cause him to be hired out in like manner as in section one of this act.

SEC. 4. *Be it further enacted*, That when any person shall be convicted of vagrancy, as provided for in this act, the justice of the peace, before whom such conviction is had, may, at his discretion, either commit such person to jail, to the house of correction, or hire such person to any person who will hire the same, for a period not longer than six months, for cash, giving three days' notice of the time and place of hiring; and the proceeds of such hiring, after paying all costs and charges, shall be paid into the county treasury for the benefit of the helpless in the poor-house.

SEC. 5. *Be it further enacted*, That all fines received by any justice of the peace under the provisions of this act, shall be paid into the county treasury for the purposes as set forth in section one of this act.

SEC. 6. *Be it further enacted*, That it shall be the duty of the justice of the peace to settle with the county treasurer at least once a month, for all fines received by him under this act, and for a willful default so to do, he shall be guilty of a misdemeanor; and upon conviction in any court having jurisdiction, shall be fined in double the amount so received or collected by him and all costs of suit.

SEC. 7. *Be it further enacted*, That the court of county commissioners of each county shall have full and complete control of the public works and public highways therein, and shall make all contracts in relation thereto; and shall have power to appoint a superintendent of said public works and highways, under such rules and regulations as said court shall determine; and any justice of the peace trying any cause under this act, on conviction, shall have power to sentence such vagrant to work on said public works and highways, under the supervision of such superintendent, for not more than forty days.

Approved, December 15, 1865.

AN ACT to prevent persons from purchasing or receiving stolen goods.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That any person who shall purchase or receive from any free person of color any stolen goods or property, knowing the same to have been stolen, shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace, aided by six competent jurors, who shall be summoned by a constable, shall be fined not less than one hundred dollars, and be imprisoned not less than ten days.

Approved, December 15, 1865.

AN ACT to punish the offering to bribe to commit offenses.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That any person who corruptly gives, offers, or promises any gift, gratuity, or thing of value to another person, with intent to induce or influence such person to

commit any crime or offense punishable as a felony, must, on conviction, be imprisoned in the penitentiary, not less than two, nor more than ten years; and if the offense, for the commission of which such bribe is offered, be less than a felony, then the person giving, offering, or promising such bribe, must, upon conviction, be punished as if he had committed such offense.

Approved, January 23, 1866.

AN ACT to amend section 3147 of the Code, so as to prevent embezzlement and fraudulent conversions by bailees.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That section 3147 of the Code be amended by adding the word "bailee" after the word "attorney" in the fourth line, and by adding the word "bailee" after the word "attorney" in the eighth line of said section, so that said section, as amended, shall read as follows: "Sec. 3147. If any president, cashier, or other officer, agent, or servant of any bank incorporated under any law of this State; or any private banker, commission merchant, factor, broker, attorney, bailee, or any other agent, embezzles, or fraudulently converts to his own use, any effects or property belonging to, or in possession of such bank, or deposited therein, or any property deposited with such private banker, commission merchant, factor, broker, attorney, bailee, or other agent, belonging to another, must, on conviction, be punished, as if he had feloniously stolen such property." Approved, December 14, 1865.

AN ACT to prevent persons from interfering so as to induce laborers or servants to abandon their contracts, or to employ such without the consent of their original employer before the expiration of the contract, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That it shall not be lawful for any person to interfere with, hire, employ, or entice away, or induce to leave the service of another, any laborer or servant, who shall have stipulated, or contracted in writing, to serve for any given number of days, weeks, or months, or for one year, so long as the said contract shall be and remain in force and binding upon the parties thereto, without the consent of the party employing, or to whom said ser-

vice is due and owing in writing, or in the presence of some veritable white person; and any person who shall knowingly interfere with, hire, employ, or entice away, or induce to leave the service aforesaid, without justifiable excuse therefor, before the expiration of said term of service, so contracted and stipulated as aforesaid, shall be guilty of a misdemeanor, and, on conviction thereof, must be fined in such sum not less than fifty, nor more than five hundred dollars, as the jury trying the same may assess, and in no case less than double the amount of the injury sustained by the party from whom such laborer or servant was induced to leave; one-half to go to the party injured, and the other to the county as fines and forfeitures.

SEC. 2. *Be it further enacted*, That the party injured shall be a competent witness in all prosecutions under this act, notwithstanding his interest in the fine to be assessed.

SEC. 3. *Be it further enacted*, That when any laborer or servant, having contracted as provided in the first section of this act, shall afterward be found, before the termination of said contract, in the service or employment of another, that fact shall be *prima facie* evidence that such person is guilty of a violation of this act, if he fail and refuse to forthwith discharge the said laborer or servant, after being notified and informed of such former contract and employment.

Approved, February 16, 1866.

AN ACT to amend section 3178 of the Code.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That section 3178 of the Code, in words and figures as follows: "Any person who buys, receives, conceals, or aids in the concealment of any personal property other than slaves, or deed, conveyance, or other writing specified in section 3176, knowing such personal property to have been stolen, or such deed, conveyance or writing to have been taken with the intention to injure or defraud, must, on conviction, be imprisoned in the penitentiary not less than two, nor more than five years," be amended by adding, at the end of said section, the following words: "or by fine and imprisonment, one or both, at the discretion of the jury trying the same."

Approved, January 23, 1866.

ANALYSIS OF PENAL CODE.

Title First.

OF PUBLIC OFFENSES; DEFINITIONS, AND PUNISHMENT OF.

CHAP. 1.—General Classification, and Definitions... 17
CHAP. 2.—Offenses against the State Sovereignty... 18
CHAP. 3.—Offenses against the Public Peace..... 18
CHAP. 4.—Offenses against Public Justice..... 20
CHAP. 5.—Offenses against Public Morality and Decency..... 29
CHAP. 6.—Offenses against Public Health..... 37
CHAP. 7.—Offenses against Public Currency and Revenue..... 38
CHAP. 8.—Offenses against the Person..... 42
CHAP. 9.—Offenses against Property, Public or Private..... 51
CHAP. 10.—Miscellaneous Offenses..... 62

Title Second.

OF PUNISHMENTS GENERALLY.

CHAP. 1.—Legal Punishments specified; Clergy abolished..... 64
CHAP. 2.—Fines..... 64
CHAP. 3.—Hard Labor for the County..... 66
CHAP. 4.—Imprisonment in County Jail; and herein of Police of Jails, and Duties of Jailors, 69
CHAP. 5.—Imprisonment in Penitentiary; and herein of the Lease, Organization, and Police of the Penitentiary, the Powers, Duties, and Compensation of its Officers, the Removal of Convicts to the Penitentiary, Service of Process on them, and the Mode of taking their Testimony..... 74
ARTICLE 1.—Sentence of Imprisonment,..... 74
ARTICLE 2.—Lease of Penitentiary,..... 75
ARTICLE 3.—Organization; Powers, Duties, and Compensation of Officers,..... 80

ARTICLE 4.—Removal of Prisoners,..... 85
ARTICLE 5.—Police and Sanitary Regulations; Punishments, and Escapes,..... 88
ARTICLE 6.—Service of Process, and Testimony of Convicts,.. 95
CHAP. 6.—Sentence of Death,..... 97

Title Third.

OF THE PROCEEDINGS IN CRIMINAL CASES.

CHAP. 1.—Criminal Courts, and their Jurisdiction,.. 100
CHAP. 2.—Local Jurisdiction of Offenses,..... 103
CHAP. 3.—Limitation of Prosecutions,..... 104
CHAP. 4.—Proceedings to Keep the Peace,..... 105
CHAP. 5.—Preliminary Proceedings; and herein of the Complaint, Warrant of Arrest, Arrest, Examination, Commitment and Discharge of the Defendant,..... 110
ARTICLE 1.—Complaint, and Warrant of Arrest,..... 110
ARTICLE 2.—Execution of Warrant; and herein of Arrests generally,..... 112
ARTICLE 3.—Examination, Discharge, and Commitment of Defendant,..... 116
CHAP. 6.—Proceedings before Justices of the Peace,. 120
CHAP. 7.—Proceedings in the County Court,..... 122
CHAP. 8.—Proceedings in the Circuit and City Courts, 129
ARTICLE 1.—Formation of Grand and Petit Juries,..... 130
ARTICLE 2.—Powers and Duties of Grand Jurors,..... 138
ARTICLE 3.—Indictments; Form, and Contents of; Amendments, and Substitution when lost or destroyed, 141
ARTICLE 4.—Arrest, and Bail,..... 148
ARTICLE 5.—Arraignment, and Trial,..... 152
ARTICLE 6.—Removal of Trial,..... 159
CHAP. 9.—Witnesses, and Depositions,..... 160
CHAP. 10.—Bail,..... 165
CHAP. 11.—*Habeas Corpus*,..... 171
CHAP. 12.—Appeals, and Writ of Error,..... 181
CHAP. 13.—Reprieves, Commutations, and Pardons,.. 185
CHAP. 14.—Fees and Allowances,..... 187

Title Fourth.

OF SPECIAL QUASI-CRIMINAL PROCEEDINGS.

CHAP. 1.—Absconding Felons, and Fugitives from Justice,..... 195
CHAP. 2.—Coroner's Inquest,..... 198
CHAP. 3.—Search-Warrants,..... 201

THE

PENAL CODE OF ALABAMA;

PREPARED BY

GEO. W. STONE AND J. W. SHEPHERD,

AND

Adopted by the General Assembly at the Session of 1865-6;

TOGETHER WITH THE

OTHER CRIMINAL LAWS NOW IN FORCE.

PUBLISHED BY AUTHORITY.

MONTGOMERY:
REID & SCREWS, STATE PRINTERS.

1866.

TABLE OF CONTENTS.

ACT TO ESTABLISH A NEW PENAL CODE..... 5
OTHER SPECIAL ACTS OF THE LEGISLATURE..... 9
ANALYSIS OF PENAL CODE..... 15
PENAL CODE..... 17
APPENDIX—CONTAINING FORMS OF INDICTMENTS.... 206
INDEX..... 215

TABLE OF CONTENTS.

Act to Establish a New Penal Code..... 3
Other Special Acts of the Legislature..... 9
Analysis of Penal Code..... 15
Penal Code..... 17
Appendix—Containing Forms of Indictments.... 206
Index..... 212

AN ACT

TO ESTABLISH A NEW PENAL CODE.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the Penal Code prepared by the commissioners, Geo. W. Stone and Jno. W. Shepherd, and reported to the present general assembly, be, and the same is hereby, adopted as part of the criminal laws of this State.

SEC. 2. *Be it further enacted*, That three thousand copies of said Penal Code, together with this act, and the other criminal laws of the State which remain unrepealed thereby, be printed in pamphlet form, at as early a day as may be practicable, under the superintendence of a competent person, to be appointed by the governor, whose duty it shall be, to arrange and methodize said unrepealed laws as part of said Penal Code; to prepare head notes, side notes, and a complete index to the several sections composing the entire Penal Code, and to correct the proof-sheets; and who shall receive for his services such compensation as the governor may deem just and reasonable, to be paid out of the contingent fund.

SEC. 3. *Be it further enacted*, That said Penal Code, when printed, shall be distributed by the secretary of State, or under his direction, as follows: To the members of the present general assembly, one copy each; to the judges of the supreme court, circuit courts, city courts of Mobile, Montgomery, Selma, and Eufaula, chancellors, and judges of probate, one copy each; to the clerks of the circuit and city courts throughout the State, and the several justices of the peace, one copy each; to the comptroller of public accounts, State treasurer, attorney

general, and solicitors, one copy each; to the executive office, five copies; to the marshal and librarian of the supreme court, for the use of the supreme court and State libraries, ten copies; and the residue shall be sold by the secretary of State, on account of the State, at a price which shall be sufficient to reimburse the State for the cost of printing and publishing the same.

SEC. 4. *Be it further enacted*, That the following laws be, and they are hereby, absolutely repealed—that is to say, article seven, chapter two, title one, part four, of the Code of Alabama, being from section 3295 to section 3300, both inclusive; also, article ten of the same chapter, being from section 3305 to section 3335, both inclusive; also, the first, second, third, fourth, and fifth chapters, of title two, part four, of the Code of Alabama, being from section 3339 to section 3435, both inclusive; also, the seventh, eighth, and ninth chapters of the same title, being from section 3497 to section 3573, both inclusive; also, the eleventh and twelfth chapters of the same title, being from section 3619 to section 3666, both inclusive; also, the fifteenth chapter of the same title, being from section 3699 to section 3707, both inclusive; and sections 3863, 3864, 3865, 3794, 3795, 3796, 3797, and 3798 of the Code of Alabama.

SEC. 5. *Be it further enacted*, That the following laws be, and the same are hereby repealed—that is to say, chapter one, and the first, second, third, fourth, fifth, and sixth articles of chapter two, title one, part four, of the Code of Alabama, being from section 3069 to section 3294, both inclusive; also, sections 3301, 3302, 3303, 3304, 3792, 399, 1058, 1059, 1111, 1113, 1115, 1118, and 1121 of the Code of Alabama; also, the act approved February 5, 1856, entitled "An act to prevent more effectually the commission of the offenses of burglary and theft in this State;" also, the act approved February 15, 1856, entitled "An act to amend section 3222 of the Code of Alabama;" also, the act approved December 17, 1855, entitled "An act for the protection of telegraph lines and for other purposes;" also, the act approved February 5, 1856, entitled "An act to prevent the destruction of fish;" also, the act approved February 15, 1856, entitled "An act to prevent gambling on steamboats;" also, the act approved February 17, 1854, entitled "An act to prevent betting at pool-tables and bil-

hard-tables;" also, the act approved February 15, 1860, entitled "An act to amend the criminal laws of this State;" also, the act approved February 2, 1860, entitled "An act more effectually to prevent the crime of incest;" also, the act approved February 21, 1860, entitled "An act to prevent the game of keno and other games;" also, the act approved December 15, 1859, entitled "An act to amend section 399 of the Code;" also, the act approved February 16, 1860, entitled "An act to amend section 3254 of the Code of Alabama;" also, the act approved February 24, 1860, entitled "An act to amend section 3249 of the Code"; also, the act approved February 21, 1860, entitled "An act to prevent the unauthorized sale of lottery tickets in the State of Alabama;" also, the act approved February 17, 1860, entitled "An act to prevent the adulteration and sale of adulterated liquors;" also, the act approved February 16, 1860, entitled "An act to protect females from insult and injury at public assemblages;" also, the act approved February 6, 1858, entitled "An act to regulate the duties and liabilities of railroad companies in this State;" also, the act approved January 27, 1858, entitled "An act to amend section 3500 of the Code of Alabama;" also, the act approved January 16, 1858, entitled "An act to amend the criminal law in relation to rape, incest, and adultery;" also, the act approved February 8, 1858, entitled "An act to prevent betting at ten-pins;" also, the act approved February 16, 1858, entitled "An act to prevent nuisances and illegal trafficking with slaves;" also, the act approved January 20, 1858, entitled "An act to prevent the adulteration of liquors, &c.;" also, the act approved January 31, 1861, entitled "An act to regulate the hunting of wild hogs;" also, the act approved December 3, 1863, entitled "An act to prevent gaming in this State;" also, the act approved October 7, 1864, entitled "An act to punish certain offenses therein named;" and all and singular the other laws, and parts of laws, heretofore enacted, which in any manner conflict with the provisions of the Penal Code by this act adopted, in reference to the definition or punishment of any public offenses. *Provided*, however, That nothing in this section contained shall affect any prosecution now pending, or which may be hereafter commenced, for any public offense heretofore committed, or which may be hereafter committed at any

time prior to the day on which said new Penal Code shall go into effect, as by this act provided.

SEC. 6. *Be it further enacted*, That so soon as said new Penal Code shall have been printed, and delivered to the secretary of State, as by this act provided, it shall be the duty of the governor to publish his proclamation, in such newspapers throughout the State as he may select, appointing a day, not less than thirty, nor more than sixty days from the date of said proclamation, from and after which said new Penal Code and this act shall go into effect and become operative.

SEC. 7. *Be it further enacted*, That the manuscript copy of said new Penal Code, so soon as the same shall have been printed, shall be deposited in the office of the secretary of State, and be preserved for future reference.

Approved, February 23, 1866.

NOTE.—It was the intention of the legislature, as shown by the second section of the foregoing act, that all the criminal laws of the State now of force should be incorporated, in their appropriate places, in the new Penal Code by that act adopted. So far as practicable, this has been done. But several acts of the late session are so inconsistent with some provisions of the Penal Code, that it has been found impossible to reconcile them; and it is equally impossible to determine, in advance of a judicial decision of the question, which of these conflicting laws must prevail. Formerly, there was but little difficulty in such cases, the rule of construction giving effect to the law of later date. But, under the provisions of the revised constitution, (Art IV, sec. 2,) it is doubtful whether that rule will hereafter be recognized. For these reasons, the several laws referred to are herewith published in full, with the dates of their approval respectively.

Montgomery, Ala., April 16, 1866. J. W. SHEPHERD.

AN ACT the more effectually to prevent the offenses of grand larceny, arson, and burglary.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That from and after the passage of this act, any person or persons who shall be guilty of the offense of grand larceny, arson, or burglary, on conviction thereof, shall suffer death, or be imprisoned in the penitentiary for any period not less than five years, at the discretion of the jury trying the same.

Approved, December 15, 1865.

AN ACT to authorize justices of the peace to take cognizance of and try cases of misdemeanor.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That justices of the peace may take cognizance of and try all cases of misdemeanor, except cases of gaming and violations of the revenue laws.

Approved, January 20, 1866.

AN ACT to regulate proceedings before justices of the peace in cases of misdemeanor cognizable before them.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That in all cases of misdemeanors cognizable before a justice of the peace, upon affidavit made of the guilt of the accused, the justice before whom the same is made shall issue his warrant for the arrest of the accused, which shall be executed by any constable or sheriff of the county, who shall bring him before such justice with all convenient dispatch.

SEC. 2. *Be it further enacted,* That the accused, when brought before such justice, shall have the right to a trial (if he demand the same) by a jury to be composed of six jurors; and it shall be the duty of the justice, on the demand of the accused, to summon, or cause to be summoned, such jury for the trial of the accused.

SEC. 3. *Be it further enacted,* That the justice before whom the accused may be brought for trial, may, for good cause shown, adjourn the trial from time to time, as may be necessary, not exceeding ten days at one time.

SEC. 4. *Be it further enacted,* That in all cases where

the accused may be found guilty, he shall have the right of appeal to the next court sitting for the county having general jurisdiction. The accused, before he shall be allowed to take such an appeal, shall enter into bond, with sufficient surety, to be approved by the justice, and in such sum as may be prescribed by him, conditioned that the accused shall personally appear, at the term of the court to which the appeal may be taken, and that he shall attend the same, to answer to the charge against him, from day to day, and from term to term of said court, until he be discharged therefrom by due course of law.

SEC. 5. *Be it further enacted*, That in rendering the judgments in said cases, and executing the judgments and convictions thereof, and collecting the fines under this act, the said justices shall be governed by the same laws, rules and regulations, which are applicable to the circuit courts in this State in criminal cases.

Approved, January 20, 1866.

AN ACT to amend section 3794 of the Code, relating to vagrants.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That section 3794 of the Code, which reads as follows: "The following persons are vagrants," be amended by adding the following: "Any runaway, stubborn servant or child; a common drunkard, and any person, who, depending on his labor, habitually neglects his employment."

Approved, December 15, 1865.

AN ACT concerning vagrants and vagrancy.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the commissioners' court of any county in this State may purchase, rent, or provide such lands, buildings and other property as may be necessary for a poor-house, or house of correction for any such county, and may appoint suitable officers for the management thereof, and make all necessary by-laws, rules and regulations for the government of the inmates thereof, and cause the same to be enforced; but in no case shall the punishment inflicted exceed hard labor, either in or out of said house; the use of chain-gangs, putting in stocks, if necessary, to prevent escapes; such reasonable

correction as a parent may inflict upon a stubborn, refractory child; and solitary confinement for not longer than one week, on bread and water; and may cause to be hired out such as are vagrants, to work in chain-gangs or otherwise, for the length of time for which they are sentenced; and the proceeds of such hiring must be paid into the county treasury, for the benefit of the helpless in said poor-house, or house of correction.

SEC. 2. *Be it further enacted*, That the following persons are vagrants in addition to those already declared to be vagrants by law, or that may hereafter be so declared by law: a stubborn or refractory servant; a laborer or servant who loiters away his time, or refuses to comply with any contract for a term of service without just cause; and any such person may be sent to the house of correction in the county in which such offense is committed; and for want of such house of correction, the common jail of the county may be used for that purpose.

SEC. 3. *Be it further enacted*, That when a vagrant is found, any justice of the peace of the county must, upon complaint made upon oath, or on his own knowledge, issue his warrant to the sheriff or any constable of the county, to bring such person before him; and if, upon examination and hearing of testimony, it appears to the justice that such person is a vagrant, he shall assess a fine of fifty dollars and costs against such vagrant; and in default of payment, he must commit such vagrant to the house of correction, or, if no such house, to the common jail of the county, for a term not exceeding six months, and until such fine, costs and charges are paid, or such party is otherwise discharged by law. *Provided*, That when committed to jail under this section, the commissioners' court may cause him to be hired out in like manner as in section one of this act.

SEC. 4. *Be it further enacted*, That when any person shall be convicted of vagrancy, as provided for in this act, the justice of the peace, before whom such conviction is had, may, at his discretion, either commit such person to jail, to the house of correction, or hire such person to any person who will hire the same, for a period not longer than six months, for cash, giving three days' notice of the time and place of hiring; and the proceeds of such hiring, after paying all costs and charges, shall be paid into the county treasury for the benefit of the helpless in the poor-house.

SEC. 5. *Be it further enacted*, That all fines received by any justice of the peace under the provisions of this act, shall be paid into the county treasury for the purposes as set forth in section one of this act.

SEC. 6. *Be it further enacted*, That it shall be the duty of the justice of the peace to settle with the county treasurer at least once a month, for all fines received by him under this act, and for a willful default so to do, he shall be guilty of a misdemeanor; and upon conviction in any court having jurisdiction, shall be fined in double the amount so received or collected by him and all costs of suit.

SEC. 7. *Be it further enacted*, That the court of county commissioners of each county shall have full and complete control of the public works and public highways therein, and shall make all contracts in relation thereto; and shall have power to appoint a superintendent of said public works and highways, under such rules and regulations as said court shall determine; and any justice of the peace trying any cause under this act, on conviction, shall have power to sentence such vagrant to work on said public works and highways, under the supervision of such superintendent, for not more than forty days.

Approved, December 15, 1865.

AN ACT to prevent persons from purchasing or receiving stolen goods.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That any person who shall purchase or receive from any free person of color any stolen goods or property, knowing the same to have been stolen, shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace, aided by six competent jurors, who shall be summoned by a constable, shall be fined not less than one hundred dollars, and be imprisoned not less than ten days.

Approved, December 15, 1865.

AN ACT to punish the offering to bribe to commit offenses.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That any person who corruptly gives, offers, or promises any gift, gratuity, or thing of value to another person, with intent to induce or influence such person to

commit any crime or offense punishable as a felony, must, on conviction, be imprisoned in the penitentiary, not less than two, nor more than ten years; and if the offense, for the commission of which such bribe is offered, be less than a felony, then the person giving, offering, or promising such bribe, must, upon conviction, be punished as if he had committed such offense.

Approved, January 23, 1866.

AN ACT to amend section 3147 of the Code, so as to prevent embezzlement and fraudulent conversions by bailees.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That section 3147 of the Code be amended by adding the word "bailee" after the word "attorney" in the fourth line, and by adding the word "bailee" after the word "attorney" in the eighth line of said section, so that said section, as amended, shall read as follows: "Sec. 3147. If any president, cashier, or other officer, agent, or servant of any bank incorporated under any law of this State; or any private banker, commission merchant, factor, broker, attorney, bailee, or any other agent, embezzles, or fraudulently converts to his own use, any effects or property belonging to, or in possession of such bank, or deposited therein, or any property deposited with such private banker, commission merchant, factor, broker, attorney, bailee, or other agent, belonging to another, must, on conviction, be punished, as if he had feloniously stolen such property." Approved, December 14, 1865.

AN ACT to prevent persons from interfering so as to induce laborers or servants to abandon their contracts, or to employ such without the consent of their original employer before the expiration of the contract, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That it shall not be lawful for any person to interfere with, hire, employ, or entice away, or induce to leave the service of another, any laborer or servant, who shall have stipulated, or contracted in writing, to serve for any given number of days, weeks, or months, or for one year, so long as the said contract shall be and remain in force and binding upon the parties thereto, without the consent of the party employing, or to whom said ser-

vice is due and owing in writing, or in the presence of some veritable white person; and any person who shall knowingly interfere with, hire, employ, or entice away, or induce to leave the service aforesaid, without justifiable excuse therefor, before the expiration of said term of service, so contracted and stipulated as aforesaid, shall be guilty of a misdemeanor, and, on conviction thereof, must be fined in such sum not less than fifty, nor more than five hundred dollars, as the jury trying the same may assess, and in no case less than double the amount of the injury sustained by the party from whom such laborer or servant was induced to leave; one-half to go to the party injured, and the other to the county as fines and forfeitures.

SEC. 2. *Be it further enacted*, That the party injured shall be a competent witness in all prosecutions under this act, notwithstanding his interest in the fine to be assessed.

SEC. 3. *Be it further enacted*, That when any laborer or servant, having contracted as provided in the first section of this act, shall afterward be found, before the termination of said contract, in the service or employment of another, that fact shall be *prima facie* evidence that such person is guilty of a violation of this act, if he fail and refuse to forthwith discharge the said laborer or servant, after being notified and informed of such former contract and employment.

Approved, February 16, 1866.

AN ACT to amend section 3178 of the Code.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That section 3178 of the Code, in words and figures as follows: "Any person who buys, receives, conceals, or aids in the concealment of any personal property other than slaves, or deed, conveyance, or other writing specified in section 3176, knowing such personal property to have been stolen, or such deed, conveyance or writing to have been taken with the intention to injure or defraud, must, on conviction, be imprisoned in the penitentiary not less than two, nor more than five years," be amended by adding, at the end of said section, the following words: "or by fine and imprisonment, one or both, at the discretion of the jury trying the same."

Approved, January 23, 1866.

ANALYSIS OF PENAL CODE.

Title First.

OF PUBLIC OFFENSES; DEFINITIONS, AND PUNISHMENT OF.

CHAP. 1.—General Classification, and Definitions... 17
CHAP. 2.—Offenses against the State Sovereignty... 18
CHAP. 3.—Offenses against the Public Peace..... 18
CHAP. 4.—Offenses against Public Justice..... 20
CHAP. 5.—Offenses against Public Morality and Decency..... 29
CHAP. 6.—Offenses against Public Health..... 37
CHAP. 7.—Offenses against Public Currency and Revenue..... 38
CHAP. 8.—Offenses against the Person..... 42
CHAP. 9.—Offenses against Property, Public or Private..... 51
CHAP. 10.—Miscellaneous Offenses..... 62

Title Second.

OF PUNISHMENTS GENERALLY.

CHAP. 1.—Legal Punishments specified; Clergy abolished..... 64
CHAP. 2.—Fines..... 64
CHAP. 3.—Hard Labor for the County..... 66
CHAP. 4.—Imprisonment in County Jail; and herein of Police of Jails, and Duties of Jailors, 69
CHAP. 5.—Imprisonment in Penitentiary; and herein of the Lease, Organization, and Police of the Penitentiary, the Powers, Duties, and Compensation of its Officers, the Removal of Convicts to the Penitentiary, Service of Process on them, and the Mode of taking their Testimony..... 74
ARTICLE 1.—Sentence of Imprisonment,..... 74
ARTICLE 2.—Lease of Penitentiary,..... 75
ARTICLE 3.—Organization; Powers, Duties, and Compensation of Officers,..... 80

ARTICLE 4.—Removal of Prisoners,..... 85
ARTICLE 5.—Police and Sanitary Regulations; Punishments, and Escapes,..... 88
ARTICLE 6.—Service of Process, and Testimony of Convicts,.. 95
CHAP. 6.—Sentence of Death,..... 97

Title Third.

OF THE PROCEEDINGS IN CRIMINAL CASES.

CHAP. 1.—Criminal Courts, and their Jurisdiction,.. 100
CHAP. 2.—Local Jurisdiction of Offenses,..... 103
CHAP. 3.—Limitation of Prosecutions,..... 104
CHAP. 4.—Proceedings to Keep the Peace,..... 105
CHAP. 5.—Preliminary Proceedings; and herein of the Complaint, Warrant of Arrest, Arrest, Examination, Commitment and Discharge of the Defendant,..... 110
ARTICLE 1.—Complaint, and Warrant of Arrest,..... 110
ARTICLE 2.—Execution of Warrant; and herein of Arrests generally,..... 112
ARTICLE 3.—Examination, Discharge, and Commitment of Defendant,..... 116
CHAP. 6.—Proceedings before Justices of the Peace,.. 120
CHAP. 7.—Proceedings in the County Court,..... 122
CHAP. 8.—Proceedings in the Circuit and City Courts, 129
ARTICLE 1.—Formation of Grand and Petit Juries,..... 130
ARTICLE 2.—Powers and Duties of Grand Jurors,..... 138
ARTICLE 3.—Indictments; Form, and Contents of; Amendments, and Substitution when lost or destroyed, 141
ARTICLE 4.—Arrest, and Bail,..... 148
ARTICLE 5.—Arraignment, and Trial,..... 152
ARTICLE 6.—Removal of Trial,..... 159
CHAP. 9.—Witnesses, and Depositions,..... 160
CHAP. 10.—Bail,..... 165
CHAP. 11.—*Habeas Corpus*,..... 171
CHAP. 12.—Appeals, and Writ of Error,..... 181
CHAP. 13.—Reprieves, Commutations, and Pardons,.. 185
CHAP. 14.—Fees and Allowances,..... 187

Title Fourth.

OF SPECIAL QUASI-CRIMINAL PROCEEDINGS.

CHAP. 1.—Absconding Felons, and Fugitives from Justice,..... 195
CHAP. 2.—Coroner's Inquest,..... 198
CHAP. 3.—Search-Warrants,..... 201

PENAL CODE OF ALABAMA.

Title First.

OF PUBLIC OFFENSES; DEFINITIONS, AND PUNISHMENT OF.

Chapter 1. General classification, and definitions.
" 2. Offenses against the state sovereignty.
" 3. Offenses against the public peace.
" 4. Offenses against public justice.
" 5. Offenses against public morality and decency.
" 6. Offenses against the public health.
" 7. Offenses against the public currency and revenue.
" 8. Offenses against the person.
" 9. Offenses against property, public or private.
" 10. Miscellaneous offenses.

CHAPTER 1.

GENERAL CLASSIFICATION, AND DEFINITIONS.

Section 1. Public offense, definition of.
" 2. Felony, definition of.
" 3. Misdemeanor, definition of.
" 4. Penalties recoverable by qui-tam action.

§ 1. *Public offense, definition of.*—A public offense is an act or omission forbidden by law, and punishable as is hereinafter provided.

§ 2. *Felony, definition of.*—A felony, within the meaning of this code, is a public offense which may be punished by death, or by confinement in the penitentiary.

§ 3. *Misdemeanor, definition of.*—All other public offenses are called misdemeanors.

§ 4. *Penalties recoverable by qui-tam action.*—Acts, or omissions, to which a pecuniary penalty is attached, recoverable by action by a person for his own use, or for the use, in whole or in part, of the State, or of a county, or corporation, are not public offenses within the meaning of this code.

CHAPTER II.

OFFENSES AGAINST THE STATE SOVEREIGNTY.

Section 5. Treason, definition of.
" 6. Same, proof of.
" 7. Same, punishment of.

§ 5. *Treason, definition of.*—Treason against the State consists only in levying war against it, or adhering to its enemies, giving them aid and comfort.

§ 6. *Same, proof of.*—No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or on his own confession in open court.

§ 7. *Same, punishment of.*—The punishment of treason, on conviction, is either death, confinement in the penitentiary for life, or hard labor for the county for life.

CHAPTER III.

OFFENSES AGAINST THE PUBLIC PEACE.

Section 8. Affrays.
" 9. Unlawful assemblies.
" 10. Riots, and routs.
" 11. Challenges to fight duel.
" 12. Publishing as coward.
" 13. Libel, and threatening or abusive letters.
" 14. Refusal to testify by printer of libel, &c.
" 15. Carrying concealed weapons.
" 16. Trespass after warning.

§ 8. *Affrays.*—All persons guilty of an affray must, on conviction, be fined not more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 9. *Unlawful assemblies.*—If three or more persons meet together, to commit a breach of the peace, or to do any other unlawful act, each of them is guilty of a misdemeanor, and must, on conviction, be punished, at the discretion of the jury, by fine, imprisonment in the county jail, or hard labor for the county, for not more than six months.

§ 10. *Riots, and routs.*—If any persons, unlawfully assembled, demolish, pull down, or destroy, or begin to de-

molish, pull down, or destroy any dwelling-house, or other building, or any ship or vessel, they must each be punished, on conviction, at the discretion of the jury, by fine and imprisonment in the county jail, or by confinement in the penitentiary, for not less than two, nor more than five years, or by hard labor for the county, for not more than five years.

§ 11. *Challenges to fight duel.*—Any person, who gives, accepts, or knowingly carries a challenge, in writing, or otherwise, to fight in single combat, with any deadly weapon, either in or out of this State, must be punished, on conviction, at the discretion of the jury, by imprisonment in the penitentiary for two years, or by hard labor for the county for two years.

§ 12. *Publishing as coward.*—Any person who, in any newspaper, handbill, or other advertisement, written or printed, publishes or proclaims another person as a coward, or uses any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, must be punished, on conviction, by a fine of not less than two hundred, nor more than five hundred dollars, and by imprisonment in the county jail, or hard labor for the county, for not less than six, nor more than twelve months.

§ 13. *Libel, and threatening or abusive letters.*—Any person who publishes a libel of another person, or who sends to another person a threatening or abusive letter, which may tend to provoke a breach of the peace, must be punished, on conviction, by fine and imprisonment in the county jail, or hard labor for the county; the fine not to exceed, in any case, five hundred dollars, and the imprisonment or hard labor not to exceed six months.

§ 14. *Refusal to testify by printer of libel, &c.*—The printer or proprietor of any newspaper, handbill, advertisement, or libel, the publication of which is punishable under the provisions of the last two preceding sections, who refuses, when summoned, to appear and testify, before either the grand jury or the petit jury, respecting the publication of such newspaper, handbill, advertisement, or libel, (not having a good excuse, to be determined by the court,) is guilty of a contempt, and also of a misdemeanor; and, on conviction for such misdemeanor, must be fined not less than twenty, nor more than three hundred dollars; and may also

be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 15. *Carrying concealed weapons.*—Any person who, not being threatened with, or having good reason to apprehend an attack, or traveling, or setting out on a journey, carries concealed about his person a bowie-knife, or any other knife or instrument of like kind or description, or a pistol, or fire-arms of any other kind or description, or an air-gun, must be fined, on conviction, not less than fifty, nor more than three hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 16. *Trespass after warning.*—Any person who, without legal cause or good excuse, enters into the dwelling-house, or on the premises of another, after having been warned within six months preceding not to do so, is guilty of a misdemeanor, and, on conviction, must be fined not more than one hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

CHAPTER IV.

OFFENSES AGAINST PUBLIC JUSTICE.

Section 17. Perjury on trial for felony.
" 18. Perjury in other cases.
" 19. Subornation of perjury.
" 20. Bribery of executive, legislative, or judicial officer.
" 21. Accepting bribe by such officer.
" 22. Bribery of ministerial officer, juror, or arbitrator.
" 23. Same; juror, if summoned, need not be sworn.
" 24. Accepting bribe by such officer, juror, &c.
" 25. Stocking jury.
" 26. Bribing officer to stock jury.
" 27 Connivance of sheriff at such offenses.
" 28. Voluntary escape by officer.
" 29. Negligent escape by officer.
" 30. Refusal to execute process, or receive prisoner into jail.
" 31. Refusal of jailor or officer to receive prisoner into custody.
" 32. Aiding felon to escape from jail.
" 33. Aiding other prisoner to escape from jail.
" 34. Aiding prisoner to escape from custody of officer.
" 35. Escape of convict from jail or hard labor.
" 36. Disclosure of indictment by officer of court or grand juror.
" 37. Disclosure of testimony before grand jury by witness.

" 38. Refusal of witness to testify before grand jury as to gaming.
" 39. Resisting officer in execution of process.
" 40. Refusal to aid in arrest for breach of peace.
" 41. Refusal to aid officer in making arrest, or executing process.
" 42. Resisting person aiding officer in execution of process.
" 43. Suing out search-warrant maliciously, &c.
" 44. Prosecuting suit in name of another without authority.
" 45. Falsely personating bail, &c.
" 46. Compounding felony.
" 47. Same; conviction of principal felon not necessary.
" 48. Accessories after the fact.
" 49. Same; when accessory may be tried before principal.
" 50. Conspiracy to commit felony.
" 51. Conspiracy to commit misdemeanor.
" 52. Extortion.
" 53. False certificate by officer.
" 54. Refusal of officer to take or certify proof or acknowledgment of deed, &c.
" 55. Forgery of records, &c.
" 56. Forgery of official certificate.

§ 17. *Perjury on trial for felony.*—Any person who, willfully and corruptly, swears or affirms falsely, in regard to any material matter or thing, on the trial of any person under an indictment for a felony, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than three, nor more than twenty years.

§ 18. *Perjury in other cases.*—Any person who, willfully and corruptly, swears or affirms falsely, in regard to any material matter or thing, upon any oath or affirmation authorized by law, (except on the trial of any person under an indictment for a felony,) must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than five years.

§ 19. *Subornation of perjury.*—Any person who corruptly procures another to commit the crime of perjury, as defined in the last two preceding sections, must be punished in the same manner and degree that the person suborned was liable to be punished.

§ 20. *Bribery of executive, legislative, or judicial officer.*—Any person who corruptly offers, promises, or gives, to any executive, legislative, or judicial officer, after his election or appointment, either before or after he has been qualified, any gift, gratuity, or thing of value, with intent to influence his act, vote, opinion, decision, or judgment, on any cause, matter, or proceeding, which may be then pending,

or which may be by law brought before him in his official capacity, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 21. *Accepting bribe by such officer.*—Any executive, legislative, or judicial officer, who corruptly accepts, or agrees to accept, any gift, or gratuity, or other thing of value, or any promise to make any gift, or to do any act beneficial to such officer, under an agreement, or with an understanding, that his act, vote, opinion, decision, or judgment, is to be given in any particular manner, or upon any particular side, of any cause, question, or proceeding, which is pending, or may be by law brought before him in his official capacity, or that he is to make any particular appointment in his official capacity, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 22. *Bribery of ministerial officer, juror, or arbitrator.*—Any person who corruptly offers, promises, or gives, to any ministerial officer of any court of law or equity in this State, or to any auditor, juror, arbitrator, umpire, or referee, any gift, gratuity, or thing of value, with intent to bias the mind, or influence the decision of such ministerial officer, auditor, juror, arbitrator, umpire, or referee, in relation to any cause or matter which is pending in any of said courts, or before such arbitrator, umpire, or referee, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than five years.

§ 23. *Same; juror, if summoned, need not be sworn.*—To authorize a conviction, under the last section, for bribing, or offering to bribe a juror, it is not necessary that such juror should have been actually sworn or qualified, but it is sufficient that he has been summoned under legal authority.

§ 24. *Accepting bribe by such officer, juror, &c.*—Any ministerial officer of any court, or any person summoned as a juror, or appointed an auditor, arbitrator, umpire, or referee, who corruptly takes, or agrees to take, anything to give his verdict, award, or report, or corruptly receives, or agrees to receive, any gift or gratuity whatever, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard

labor for the county, for not less than two, nor more than five years.

§ 25. *Stocking jury.*—Any sheriff, or other officer having a discretion in summoning jurors, who summons any person with intent to produce a result favorable to any party having a cause in the court in which such person is summoned, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than five years.

§ 26. *Bribing officer to stock jury.*—Any person who gives, offers, or promises, to any sheriff, or other officer, any gift, gratuity, or thing of value, to induce him to summon a jury or juror, with the intent to produce a result favorable to either party, in any cause pending in any court, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than five years.

§ 27. *Connivance of sheriff at such offenses.*—Any sheriff, who connives at the commission of the offense prohibited by the last two sections, by any constable, bailiff, or deputy sheriff, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than five years.

§ 28. *Voluntary escape by officer.*—Any sheriff, or other officer or person, who has the legal custody of any person charged with, or convicted of an indictable offense, and who voluntarily permits such person to escape, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, not less than two, nor more than twenty years.

§ 29. *Negligent escape by officer.*—Any sheriff, or other officer, who has the legal custody of any person charged with, or convicted of an indictable offense, and who, through negligence, suffers such person to escape, must, on conviction, be fined not less than two hundred, nor more than one thousand dollars.

§ 30. *Refusal to execute process, or receive prisoner into jail.*—Any sheriff, or other officer, who, willfully or corruptly, refuses to execute any lawful process which it is his duty to execute, requiring the arrest of any person charged with a public offense, or willfully or corruptly omits to execute such process, whereby such person escapes; or

willfully or corruptly refuses to receive, into any jail under his charge, any offender lawfully committed to such jail, and ordered to be confined therein on any criminal charge, conviction, or lawful process whatever, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars.

§ 31. *Refusal of jailor or officer to receive prisoner into custody.*—Any jailor, or other officer, who willfully refuses to receive into his custody any person lawfully committed thereto, on any criminal charge or conviction, must, on conviction, be fined not more than five hundred dollars.

§ 32. *Aiding felon to escap from jail.*—Any person who conveys into the county jail, or into any other lawful place of confinement, any disguise, instrument, arms, or other thing useful to aid any prisoner to escape, with the intent to facilitate the escape of any prisoner therein lawfully confined under a charge or conviction of felony; or who, by any other act, or in any other way, assists such prisoner to escape, whether such escape be attempted or effected or not, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 33. *Aiding other prisoner to escape from jail.*—Any person, who, by any of the means specified in the last preceding section, or by any other act, or in any other manner whatsoever, intentionally assists, or attempts to assist, any prisoner to escape from any county jail, or other lawful place of confinement, in which he is lawfully confined under a charge or conviction of a misdemeanor, whether such escape be attempted or effected or not, must, on conviction, be fined not more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 34. *Aiding prisoner to escape from custody of officer.*—Any person who does any act with the intent to assist any prisoner in escaping, or attempting to escape, from the custody of any officer or person having the lawful charge of him, upon any criminal charge or conviction, must, on conviction, be punished as if he had assisted such prisoner to escape, or attempt to escape, from the county jail.

§ 35. *Escape of convict from jail or hard labor.*—Any convict, sentenced to imprisonment in the county jail, or to

hard labor for the county, who escapes from such confinement, or departs or runs away from such labor, before the expiration of the time for which he was sentenced, must, on conviction, be sentenced to the same punishment, for not less than twice the term of his former sentence.

§ 36. *Disclosure of indictment by officer of court or grand juror.*—Any judge, solicitor, clerk, or other officer of court, or any grand juror, who discloses the fact that an indictment has been found, before the defendant has been arrested, or has given bail for his appearance to answer thereto, is guilty of a misdemeanor, and must, on conviction, be fined not less than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 37. *Disclosure of testimony before grand jury by witness.* Any person who, having been a witness before the grand jury, discloses the name of the person about whom he testified, or any of the facts to which he testified, before the arrest of the person or persons against whom he testified, or before such person or persons have given bail for his or their appearance to answer the indictment or indictments found against him or them, is guilty of a misdemeanor, and must, on conviction, be fined not less than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 38. *Refusal of witness to testify before grand jury as to gaming.*—Any person who is summoned as a witness before the grand jury, to answer as to any gaming within his knowledge, and who fails or refuses to attend and testify in obedience to such summons, without a good excuse, to be determined by the court, is guilty of a contempt, and also of a misdemeanor; and, on conviction for such misdemeanor, must be fined not less than twenty, nor more than three hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

§ 39. *Resisting officer in execution of process.*—Any person who, knowingly and willfully, opposes or resists any officer of the State in serving, executing, or attempting to serve or execute, any legal writ or process whatsoever, must, on conviction, be fined not less than fifty, nor more

than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 40. *Refusal to aid in arrest for breach of peace.*—Any person, who, being required by any justice, or other conservator of the peace, upon view of any breach of the peace, or other offense proper for the cognizance of such officer, to apprehend, or assist in apprehending the offender, and bringing him before such officer, shall refuse or neglect to obey the command of such officer, must, on conviction, be fined not less than fifty, nor more than three hundred dollars.

§ 41. *Refusal to aid officer in making arrest, or executing process.*—Any person, who, having been summoned or commanded by any sheriff, constable, or other officer having authority, to assist such officer in making an arrest, or in executing any other duty devolving upon him under any law in relation to public offenses, shall refuse or neglect to obey such summons or command, must, on conviction, be fined not less than fifty, nor more than three hundred dollars.

§ 42. *Resisting person aiding officer in execution of process.*—Any person who assaults, beats, or resists a person, not an officer, who is acting in obedience to the lawful summons or command of any justice, sheriff, or other officer, with a knowledge of such command or summons, must, on conviction, be punished in the same manner as if he had assaulted or resisted the officer himself.

§ 43. *Suing out search-warrant maliciously, &c.*—Any person who, maliciously, and without probable cause, procures a search-warrant to be issued and executed, must, on conviction, be fined not less than twenty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 44. *Prosecuting suit in name of another without authority.*—Any person who, without lawful authority, prosecutes a suit in the name of another person, in any court of this State, is guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred dollars.

§ 45. *Falsely personating bail, &c.*—Any person who falsely personates another, and, in such assumed character, becomes bail or surety for any party in any proceeding,

civil or criminal, before any court, magistrate, or officer authorized to take such bail; or confessess any judgment, acknowledges the execution of any conveyance, or does any act in the course of any suit, prosecution, or proceeding, whereby the person so personated may be made liable for the payment of any debt, damages, costs, or sum of money, or his rights or interest be in any way affected, must, on conviction, be punished by imprisonment in the penitentiary, or hard labor for the county, for not less than two, nor more than five years.

§ 46. *Compounding felony.*—Any person who, having knowledge of the commission of a felony, takes, receives, or agrees to take or receive from another, any money, property, or other thing of value, to compound or conceal such felony, or to abstain from any prosecution therefor, must, on conviction, be fined not more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 47. *Same; conviction of principal felon not necessary.*—A prosecution and conviction may be had under the last preceding section, although the person guilty of the original offense has not been tried.

§ 48. *Accessories aft r th fact.*—Any person who, knowing that another has committed a felony, and not occupying the legitimate relation of parent, child, brother, sister, husband, or wife to such offender, conceals, or gives any other aid to such offender, with intent to enable him to avoid or escape from arrest, trial, conviction, or punishment, (and none others,) is an accessory after the fact, and is guilty of a misdemeanor; and, on conviction thereof, must be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 49. *Same; when accessory may be tried before principal.*—If the principal felon is dead, or has fled from justice, an accessory after the fact may be prosecuted and convicted, under the last preceding section, before the principal; but, in such case, it shall be necessary to allege in the indictment, and to prove on the trial, the fact that the principal is dead, or has fled.

§ 50. *Conspiracy to commit felony.*—Any two or more

persons, conspiring together to commit a felony, must each, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 51. *Conspiracy to commit misdemeanor.*—Any two or more persons, conspiring together to commit a misdemeanor, and doing some act to carry into effect their intent, must each, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

§ 52. *Extortion.*—Any justice of the peace, clerk, sheriff, or other officer, who is by law authorized to receive fees for services rendered by him in his official capacity, and who knowingly takes a fee or fees for any services not actually rendered by him, or knowingly takes any greater fee or fees than are by law allowed for any services actually rendered by him, must, on conviction, be fined not less than twenty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 53. *False certificate by officer.*—Any officer, authorized to take the proof or acknowledgment of any conveyance of property, real or personal, who, with intent to injure or defraud, or to enable any other person to injure or defraud, willfully certifies that any such conveyance was duly proved or acknowledged, when such proof or acknowledgment was not in fact made, or was not made on the day stated in such certificate, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 54. *Refusal of officer to take or certify proof or acknowledgment of deed, &c.*—Any officer, authorized by law to take and certify the proof or acknowledgment of any deed, conveyance, or other instrument authorized or required by law to be recorded, who refuses to receive or certify the proof or acknowledgment of any such deed, conveyance, or other instrument, or to record any deed, conveyance, or other instrument, properly proved or acknowledged and certified, which it is his duty to record, (his lawful fees for any such services being first tendered to him,) must, on conviction, be fined not less than fifty, nor more than one thousand dollars; and may also be imprisoned in the county jail, not more than six months.

§ 55. *Forgery of records, &c.*—Any person who, with intent to defraud, falsely alters, forges, destroys, or falsifies the record of any judgment or decree of any court of record, either of law or equity, or of any will, conveyance, or other instrument, which is by law required or authorized to be recorded, or the return of any officer to any writ or process of any court, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 56. *Forgery of official certificate.*—Any person, who, with intent to defraud, counterfeits, forges, or falsely alters any certificate or endorsement, made, or purporting to have been made, by any officer authorized by law to make such certificate or endorsement, of the acknowledgment by any person of any deed or other instrument by law authorized or required to be acknowledged and recorded; or any certificate, made, or purporting to have been made, by any court or officer authorized by law to make such certificate, of the proof of any deed, will, or other instrument, which is by law authorized or required to be recorded on proof, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

CHAPTER V.

OFFENSES AGAINST PUBLIC MORALITY AND DECENCY.

Section 57. Living in adultery or fornication.
" 58. Bigamy.
" 59. Same; exceptions.
" 60. Incest.
" 61. Marriages between white persons and negroes.
" 62. Same; officer issuing license, or performing marriage ceremony.
" 63. Crime against nature.
" 64. Attempts to procure abortion.
" 65. Removing dead body from grave.
" 66. Same; exception as to physicians and surgeons.
" 67. Buying such dead bodies.
" 68. Violating graves.
" 69. Mutilating dead bodies.
" 70. Defacing tomb-stone, &c.
" 71. Disturbing religious worship.
" 72. Disturbing females at public assembly by profanity, &c.

Section 73. Sabbath-breaking.
" 74. Lotteries.
" 75. Spirit-rappings, fortune-telling, &c.
" 76. Retailing spirituous liquors without license.
" 77. Selling or giving liquor to minor, apprentice, or student.
" 78. Card-playing at public places.
" 79. Keeping gaming-table.
" 80. Betting at cards, dice, &c.
" 81. Betting at billiards, ten-pins, &c.
" 82. Betting with minor or apprentice.
" 83. Retailers &c. permitting gaming on their premises.
" 84. Renting room, booth, &c., to be used for gaming purposes.
" 85. Solicitors' authority to summon witnesses in gaming cases.
" 86. Examination of such witnesses before grand jury.
" 87. Judicial and executive officers' authority and duty in gaming cases.
" 88. Vagrancy.

§ 57. *Living in adultery or fornication.*—If any man and woman live together in adultery, or fornication, each of them must, on the first conviction of the offense, be fined not less than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; on the second conviction for the offense, with the same person, the offender must be fined not less than three hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months; and on a third, or any subsequent conviction, with the same person, must be imprisoned in the penitentiary, or sentenced to hard labor for the county, for two years.

§ 58. *Bigamy.*—If any person, having a former wife or husband living, marries another, or continues to cohabit with such second husband or wife in this State, he or she must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than five years.

§ 59. *Same; exceptions.*—The provisions of the last preceding section do not apply to any person, who, prior to such second marriage, had procured a decree, from a court of competent jurisdiction, dissolving his or her former marriage, and allowing him or her the privilege of marrying again; nor to any person who, at the time of such second marriage, did not know that his or her former husband or wife was living, and whose former husband or wife had remained absent from him or her for the last five years preceding such second marriage.

§ 60. *Incest.*—If any man and woman, being within the degree of consanguinity or relationship within which marriages are declared by law to be incestuous and void, and knowing of such consanguinity or relationship, intermarry, or live together in adultery, each of them must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than seven years.

§ 61. *Marriages between white persons and negroes.*—If any white person and any negro, or the descendant of any negro, to the third generation inclusive, though one ancestor of each generation was a white person, intermarry, or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than seven years.

§ 62. *Same; officer issuing license, or performing marriage ceremony.*—Any probate judge, who issues a license for the marriage of any persons who are prohibited by the last preceding section from intermarrying, knowing that they are within the provisions of that section; and any justice of the peace, minister of the gospel, or other person by law authorized to solemnize the rites of matrimony, who performs a marriage ceremony for such persons, knowing that they are within the provisions of said section, must, each, on conviction, be fined not less than one hundred, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 63. *Crime against nature.*—Any person who commits the crime against nature, either with mankind, or with any beast, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 64. *Attempts to procure abortion.*—Any person who willfully administers to any pregnant woman any drug or substance, or uses or employs any instrument or other means to procure her miscarriage, unless the same is necessary to preserve her life, and done for that purpose, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not less than three, nor more than twelve months.

§ 65. *Removing dead body from grave.*—Any person who, from wantonness, or for the purpose of dissection or sale, removes the dead body of any human being from its place of interment, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 66. *Same; exceptions as to physicians and surgeons.*—Licensed physicians and surgeons, to whom the bodies of criminals, executed for capital offenses, are delivered pursuant to law, or to whom the dead bodies of other persons are delivered by or with the consent of their relatives, are not within the provisions of the last preceding section.

§ 67. *Buying such dead bodies.*—Any person who purchases or receives from another the dead body of any human being, knowing that it was disinterred contrary to law, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

§ 68. *Violating graves.*—Any person who opens any place of interment, with the intent to remove the dead body of any human being for the purpose of selling it, or with the intent to steal the coffin, or any part thereof, or the vestments, or any other articles interred with the body, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year.

§ 69 *Mutilating dead bodies.*—Any person who wantonly mutilates the dead body of any human being, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year; but the provisions of this section do not apply to dissections by physicians and surgeons.

§ 70. *Defacing tomb-stone, &c.*—Any person who, willfully or maliciously, injures, defaces, removes, or destroys, any tomb, monument, grave-stone, or other memorial of the dead, or any fence or enclosure about any tomb, monument, grave-stone, or memorial; or who willfully destroys, removes, cuts, breaks, or injures, any tree, shrub or plant, within such enclosure,—must, on conviction, be fined not less than one hundred, nor more than five hundred dollars,

and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year.

§ 71. *Disturbing religious worship.*—Any person who willfully interrupts, or disturbs, any assemblage of people met for religious worship, by noise, profane discourse, rude or indecent behavior, or any other act at or near the place of worship, must, on conviction, be fined not less than twenty, nor more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 72. *Disturbing females at public assembly by profanity, &c.*—Any person who, by rude or indecent behavior, or by profane or obscene language, willfully disturbs the females in any public assembly, met for the purpose of instruction, amusement, or recreation, must, on conviction, be fined not less than twenty, nor more than two hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 73. *Sabbath-breaking.*—Any person who compels his child, apprentice, or servant, to perform any labor on Sunday, except the customary domestic duties of daily necessity or comfort, or works of charity; or who engages in shooting, hunting, gaming, card-playing, or racing, on that day; or who, being a merchant or shop-keeper, (druggists excepted,) keeps open store on that day,—must, for the first offense, be fined not less than ten, nor more than twenty dollars; and for the second, or any subsequent offense, must be fined not less than twenty, nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months. But the provisions of this section do not apply to the running of railroads, stages, steamboats, or any other vessels navigating the waters of this State, or any manufacturing establishment which requires to be kept in constant operation.

§ 74. *Lotteries.*—Any person who sets up, carries on, or is concerned in setting up or carrying on, any lottery, or device of the like kind, without the legislative authority of this State; or who sells, or is interested or concerned in selling, any tickets or shares in such unauthorized lottery, must, on conviction, be fined not less than one hundred, nor more than two thousand dollars.

§ 75. *Spirit-rappings, fortune-telling, &c.*—Any person who, not having first procured a license from the proper legal authority, publicly exhibits spirit-rappings, spiritual manifestations, or other device, by whatsoever name called, which professes to reveal communications from the spirits of the living or the dead; or who, publicly or privately, for profit, practices, teaches, or offers to practice or teach, fortune-telling, clairvoyance, psychology, or any other art or mystery of the like kind or description,—must, on conviction, be fined not less than one hundred, nor more than one thousand dollars.

§ 76. *Retailing spirituous liquors without license.*—Any person who, not having first procured a license as a retailer from the proper legal authority, sells vinous or spirituous liquor of any kind, in quantities less than one quart, or by the quart or less quantity to any person of known intemperate habits, or in any quantity if the same is drunk on or about his premises, must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 77. *Selling or giving liquor to minor, apprentice, or student.*—Any person who keeps fermented, vinous, or spirituous liquors for sale, whether a licensed retailer or not, and who sells, gives, or delivers any of such liquors, to any minor, apprentice, student or pupil of any school, academy, or college, or to any person for the use of any minor, apprentice, student, or pupil, knowing the use for which it was intended, without the consent of the parent, guardian, master, or other person having the legal charge of such minor, apprentice, student, or pupil,—must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 78. *Card-playing at public places.*—Any person who plays at any game with cards, dice, or any device or substitute for either cards or dice, at any tavern, inn, store-house for retailing spirituous liquors, or house or place where spirituous liquors are retailed, sold, or given away; or in any public house, highway, or other public place, or any outhouse where people resort, must, on conviction,

fined not less than twenty, nor more than fifty dollars.

§ 79. *Keeping gaming-table.*—Any person who keeps, exhibits, or is interested or concerned in keeping or exhibiting, any table for gaming, of whatsoever name, kind, or description, not regularly licensed under the laws of this State, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 80. *Betting at cards, dice, &c.*—Any person who bets or hazards any money, bank-notes, or other thing of value, at any gaming-table prohibited by the last preceding section, or at any game prohibited by section 78, or at a game called keno, or at any game of hazard or skill played on any steamboat while navigating any of the rivers of this State, must, on conviction, be fined not less than fifty, nor more than three hundred dollars.

§ 81. *Betting at billiards, ten-pins, &c.*—Any person who bets or hazards any money, bank-notes, or other thing of value, (except the charge for the use of the table or alley,) at billiards, ten-pins, or any other game, at any table or alley regularly licensed, must, on conviction, be fined not less than fifty, nor more than one hundred dollars.

§ 82. *Betting with minor or apprentice.*—Any person who, being of full age, bets or hazards any money, bank-notes, or other thing of value, with a minor, or with an apprentice; or who allows any minor or apprentice to bet or hazard any thing of value at any gaming-table kept or exhibited by him, or in which he is interested or concerned, (whether such table be regularly licensed or not,) must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 83. *Retailers &c. permitting gaming on their premises.* Any person who, being a licensed retailer, or the keeper, proprietor, owner, or superintendent of any tavern, inn, or other public house, or of any house where spirituous liquors are sold, retailed, or given away, or of any outhouse where people resort, or the captain, or other commanding officer, of any steamboat navigating any of the rivers of this State, knowingly suffers any of the offenses prohib-

ited by the last five preceding sections to be comm in his house, or on his premises, or on his boat,—mus conviction, be fined not less than one hundred, nor n than five hundred dollars; and may also be imprisoned the county jail, or sentenced to hard labor for the coun for not more than six months.

§ 84. *Renting room, booth, &c., to be used for gaming p poses.*—Any person who, being the owner or proprietor any house, room, booth, or tent, rents or leases the same t be used for gaming purposes, or for the exhibition of any gaming-table not regularly licensed, or knowingly permits the same to be used for any such purpose, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 85. *Solicitors' authority to summon witnesses in gaming cases.*—Solicitors have authority, and it is their duty, to summon any person to appear before the grand jury, to give evidence of any violation of the laws against gaming, as specified in the last seven preceding sections; and such summons may be issued at any time in vacation, or during term time.

§ 86. *Examination of such witnesses before grand jury.*—Witnesses before the grand jury, summoned to give evidence of any violation of the laws against gaming, may be required to answer generally as to any such offense, within their knowledge, committed within the twelve months next preceding, without being first specially interrogated as to any particular offense; but no witness must be prosecuted for any offense, as to which he testified before the grand jury; and any member of the grand jury may be a witness to prove that fact.

§ 87. *Judicial and executive officers' authority and duty in gaming cases.*—Judges of the circuit, city, and county courts, justices of the peace, sheriffs, constables, and the judicial and executive officers of any incorporated city or town, have authority, and it is their duty, on receiving information, or having good cause to believe, that any person is violating, or has violated, the provisions of section 79, to cause such person to be arrested, and carried before some judicial officer having jurisdiction of the offense; and

the officer before whom he is carried, if it appears from the evidence that he is guilty, must require him to give bail for his appearance at the next term of the court having jurisdiction of the offense, and, on his failure to do so, must commit him to the county jail.

§ 88. *Vagrancy.*—Any person who, having no visible means of support, or being dependent on his labor, lives without employment, or habitually neglects his employment; or who abandons his family, and leaves them in danger of becoming a burden to the public; or who, being an able-bodied person, is found begging; or who is a common drunkard, or a common gambler, or goes from place to place for the purpose of gambling; or who is a common prostitute, or the keeper of a house of prostitution, and has no honest employment whereby to maintain herself,—must each, on conviction for the first offense, be fined not less than ten, nor more than fifty dollars; and on a second conviction within six months after the first, must be fined not less than fifty, nor more than one hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

CHAPTER VI.

OFFENSES AGAINST PUBLIC HEALTH.

Section 89. Selling tainted or diseased meat.
" 90. Selling unwholesome bread.
" 91. Adulterating sugar.
" 92. Adulterating liquors.

§ 89. *Selling tainted or diseased meat.*—Any butcher, or other person, who sells, or offers or exposes for sale, or suffers his apprentice, servant, agent, or other person, for him, to sell, offer, or expose for sale, any tainted, putrid, or unwholesome fish or flesh, or the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, for the purpose of being sold or offered for sale, must, on conviction, be fined not less than twenty, nor more than two hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 90. *Selling unwholesome bread.*—Any baker, or other person, who sells, or offers or exposes for sale, or suffers his servant, apprentice, agent, or other person, for him, to sell, offer, or expose for sale, any bread made from sour or unwholesome flour, must, on conviction, be fined not less than twenty, nor more than two hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 91. *Adulterating sugar.*—Any merchant, grocer, or other person, who mixes any foreign matter or substance with sugar, so as to deteriorate the quality, and sells, or offers or exposes for sale, such adulterated sugar; or who suffers his servant, apprentice, agent, or other person, for him, so to adulterate sugar, or to sell, offer, or expose for sale, such adulterated sugar, must, on conviction, be fined not less than twenty, nor more than two hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 92. *Adulterating liquors.*—Any manufacturer, brewer, distiller, grocer, tavern-keeper, retailer of wines, or of spirituous or fermented liquors, or other person, who sells, or offers, or exposes for sale, or permits his servant, apprentice, agent, or other person, for him, to sell, offer, or expose for sale, any wines, or spirituous or fermented liquors, which have been adulterated by the mixture of any poisonous or unwholesome substance, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

CHAPTER VII.

OFFENSES AGAINST PUBLIC CURRENCY AND REVENUE.

Section 93. Forgery of bank-note, check, &c.
" 94. Uttering as true forged bank-note, check, &c.
" 95. Counterfeiting gold or silver coin, &c.
" 96. Counterfeiting engraved plate of bank-note, check, &c.
" 97. Same; as to form of plate.
" 98. Counterfeiting public seal.
" 99. Other forgeries.

" 100. Punishment of forgery and counterfeiting.
" 101. Emitting change-bills as money.
" 102. Circulating such change-bills.
" 103. Embezzlement by State treasurer.
" 104. Failure of comptroller to notify tax-collectors as to funds receivable for taxes.
" 105. Embezzlement by tax-collectors.
" 106. Neglect of duty imposed by revenue law.
" 107. Failure of tax-payer to render tax-list.
" 108. Rendering false or fraudulent tax-list.
" 109. Failure to testify as to correctness of assessment, &c.
" 110. Failure to take out license, or pay tax.

§ 93. *Forgery of bank-note, check, &c.*—Any person who, with intent to injure or defraud any person, corporation, state, or government, alters, forges, or counterfeits, any bill, note, draft, check, certificate, or other evidence of debt, issued by any incorporated bank, or banking company, of this or any other State, or by authority of any law of the United States, or by any officer authorized to issue the same, or drawn on any incorporated bank or banking company, or on the treasurer of this State, is guilty of forgery in the first degree.

§ 94. *Uttering as true forged bank-note, check, &c.*—Any person who, with intent to injure or defraud, utters and publishes as true any falsely altered, forged, or counterfeited bill, note, draft, check, certificate, or other evidence of debt specified in the last preceding section, knowing the same to be altered, forged, or counterfeited, is guilty of forgery in the first degree.

§ 95. *Counterfeiting gold or silver coin, &c.*—Any person who counterfeits any gold, silver, or other coin, which is at the time current by law, usage, or custom, in this State; or who has in his possession any counterfeit gold, silver, or other coin, which is at the time current in this State, knowing the same to be counterfeited, and with intent to defraud or injure by uttering the same as true, or by causing the same to be so uttered; or who utters and publishes as true such counterfeit coin, knowing the same to be counterfeited, and with intent to injure or defraud,—is guilty of forgery in the second degree.

§ 96. *Counterfeiting engraved plate of bank-note, check, &c.*—Any person who makes, engraves, or causes or procures to be made or engraved, any plate in the form or similitude of a promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt,

issued by any incorporated bank or banking company, within this or any other State, without the authority of such bank, or banking company; or who has in his custody, or possession, without the authority of such bank, any impression taken from any such plate, with the intent to have the same filled up and completed, for the purpose of being passed, sold, or uttered; or who makes, or causes or procures to be made, or has in his custody or possession, any plate on which are engraved any words or figures, which may be used for falsely uttering any evidence of debt issued by any such bank or banking company, with intent to use the same for that purpose,—is guilty of forgery in the second degree.

§ 97. *Same; as to form of plate.*—Every plate, the engraving on which resembles or conforms to such parts of the genuine instrument as are engraved, must be deemed to be 'in the form or similitude' of the instrument imitated, within the meaning of the last preceding section.

§ 98. *Counterfeiting public seal.*—Any person who, with intent to defraud, counterfeits or forges the seal of this State, or of any public office authorized by law, or of any court of record, or of any bank or banking company incorporated under the authority of this State, or falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

§ 99. *Other forgeries.*—Any forgery which, under the provisions of this code, does not amount to forgery in the first or second degree, must be adjudged forgery in the third degree.

§ 100. *Punishment of forgery and counterfeiting.*—Forgery in the first degree is punished by imprisonment in the penitentiary, or hard labor for the county, for not less than ten, nor more than twenty years; in the second degree, by imprisonment in the penitentiary, or hard labor for the county, for not less than two, nor more than ten years; and in the third degree, by imprisonment in the county jail, or hard labor for the county, for not more than twelve months.

§ 101. *Emitting change-bills as money.*—Any person, private corporation, or association, who makes, emits, signs, or countersigns, or causes or procures to be made, emitted,

signed, or countersigned, without authority of law, any paper to answer the purposes of money, or for general circulation, must each, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail for not more than one year.

§ 102. *Circulating such change-bills.*—Any person who passes or circulates, in this State, any paper issued without authority of law, to answer the purposes of money, must, on conviction, be fined not less than twenty, nor more than one hundred dollars.

§ 103. *Embezzlement by State treasurer.*—If the State treasurer, or any other person employed in his office, embezzles, or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, any money, property or effects belonging to the State, and which has come to his possession by virtue of his employment, he must be punished, on conviction, as if he had stolen it.

§ 104. *Failure of comptroller to notify tax-collectors as to funds receivable for taxes.*—The comptroller of public accounts, for each failure to give notice to tax-collectors, as required by the 93d section of the revenue law, must, on conviction, be fined not less than two hundred and fifty dollars.

§ 105. *Embezzlement by tax-collectors.*—Any officer of the State or county, who is employed in the collection of the public revenue, and who knowingly converts to his own use, or otherwise misapplies, any part of the money or funds collected by him, or which may come to his possession by virtue of his employment, must, on conviction, be fined not less than five hundred dollars, and be imprisoned in the penitentiary not less than one year, one or both, at the discretion of the jury.

§ 106. *Neglect of duty imposed by revenue law.*—Any officer, or person, upon whom any duty is imposed by any section of the revenue law, and who willfully neglects to perform such duty, is guilty of a misdemeanor, and, on conviction thereof, (unless some other provision is made for the punishment of such neglect,) must be fined not less than twenty, nor more than one hundred dollars, at the discretion of the jury.

§ 107. *Failure of tax-payer to render tax-list.*—Any tax-

payer, who fails to render a list of his taxable property, within fifteen days after personal demand or written notice by the assessor, is guilty of a misdemeanor, and must, on conviction thereof, be fined not less than ten dollars.

§ 108. *Rendering false or fraudulent tax-list.*—Any taxpayer who, for the purpose of defrauding the State or county, knowingly renders a false or fraudulent tax-list, is guilty of a misdemeanor, and must, on conviction thereof, be fined not less than two hundred dollars, and be imprisoned in the county jail not less than six months.

§ 109. *Failure to testify as to correctness of assessment, &c.*—Any person who is summoned by any tax-assessor, to testify as to the value of any real estate, or as to the correctness or fairness of any assessment, and who fails to attend, or refuses to testify, is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than twenty-five dollars.

§ 110. *Failure to take out license, or pay tax.*—Any person who engages in any business, or does any act, for which, under the provisions of the revenue law, he is required to procure a license, or to pay a tax, without having first obtained a license from the proper legal authority, or paid the tax required by law, is guilty of a misdemeanor, and, on conviction thereof, (unless some other punishment is expressly provided by law,) must be fined double the amount of the required license or tax.

CHAPTER VIII.

OFFENSES AGAINST THE PERSON.

Section 111. Murder; different degrees of.
" 112. Same; punishment of.
" 113. Killing in duel.
" 114. Killing in sudden rencounter with concealed weapon.
" 115. Degree of murder to be found by jury.
" 116. Manslaughter with bowie-knife.
" 117. Manslaughter; different degrees of.
" 118. Same; punishment of.
" 119. Rape.
" 120. Carnal knowledge of woman by administering drugs, &c.
" 121. Carnal knowledge of female under ten years of age.
" 122. Carnal knowledge of married woman by falsely personating husband.

" 123. Attempt to have carnal knowledge of married woman by such deception.
" 124. Forcible marriage &c. of woman.
" 125. Taking female under fourteen from father, &c., for prostitution or marriage.
" 126. Robbery.
" 127. Mayhem.
" 128. Assaults with intent to murder, rob, &c.
" 129. Using fire-arms while fighting in public place.
" 130. Assault with cowhide &c., having pistol to intimidate.
" 131. Accident on steamboat, from officer's negligence, or want of skill.
" 132. Endangering life by bursting boiler of steamboat.
" 133. Endangering life by steamboat racing.
" 134. Endangering life by overloading vessel.
" 135. Negligence of railroad conductor, &c.
" 136. Endangering life by railroad accident.
" 137. Obstructing railroad maliciously, &c.
" 138. Injuring railroad maliciously, &c.
" 139. Poisoning springs, wells, &c.
" 140. Selling poisons without precautions to prevent accidents.
" 141. Lynching.
" 142. Assaults, and assaults and batteries.
" 143. Maltreatment of convict at penal labor by officer.
" 144. Maltreatment of such convict by hirer.
" 145. Decoying off children.
" 146. Kidnapping.
" 147. Enticing away servant or apprentice.
" 148. Shooting and horse-racing on public road.

§ 111. *Murder; different degrees of.*—Every homicide, perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or the attempt to perpetrate, any arson, rape, robbery, or burglary; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed; or perpetrated by any act greatly dangerous to the lives of others, and evidencing a depraved mind regardless of human life, although without any preconceived purpose to deprive any particular person of life,—is murder in the first degree; and every other homicide, committed under such circumstances as would have constituted murder at common law, is murder in the second degree.

§ 112. *Same; punishment of.*—Any person, who is guilty of murder in the first degree, must, on conviction, suffer death, or imprisonment in the penitentiary for life, at the discretion of the jury; and any person, who is guilty of murder in the second degree, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for

the county, for not less than ten years, at the discretion of the jury.

§ 113. *Killing in duel.*—Killing by fight in single combat, commonly called a duel, with deadly weapons, is murder in the second degree.

§ 114. *Killing in sudden rencounter with concealed weapon.* When the killing, in any sudden rencounter or affray, is caused by the assailant, by the use of a deadly weapon, which was concealed before the commencement of the fight, his adversary having no deadly weapon drawn, such killing is murder in the second degree, and may, according to the circumstances, be murder in the first degree.

§ 115. *Degree of murder to be found by jury.*—When the jury find the defendant guilty, under an indictment for murder, they must ascertain, by their verdict, whether it is murder in the first or second degree; but, if the defendant, on arraignment, confesses his guilt, the court must proceed to determine the degree of the crime, by the verdict of a jury, upon an examination of the testimony, and pass sentence accordingly.

§ 116. *Manslaughter with bowie-knife.*—Any person who, being armed with a bowie-knife, or other knife of the like kind or description, commits manslaughter therewith in a sudden rencounter, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than five, nor more than ten years.

§ 117. *Manslaughter; different degrees of.*—Manslaughter by voluntarily depriving a human being of life, is manslaughter in the first degree; and manslaughter committed under any other circumstances, is manslaughter in the second degree.

§ 118. *Same; punishment of.*—Any person, who is convicted of manslaughter in the first degree, must, at the discretion of the jury, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than one year, nor more than ten years; and any person, who is convicted of manslaughter in the second degree, must, at the discretion of the jury, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year, and may also be fined not more than five hundred dollars.

§ 119. *Rape.*—Any person, who is guilty of the crime

of rape, must, on conviction, be punished, at the discretion of the jury, either by death, or by imprisonment in the penitentiary for life, or by hard labor for the county for life.

§ 120. *Carnal knowledge of woman by administering drugs, &c.*—Any person, who has carnal knowledge of any female above ten years of age, without her consent, by administering to her any drug, or other substance, which produces such stupor, imbecility of mind, or weakness of body, as to prevent effectual resistance, must, on conviction, be punished, at the discretion of the jury, either by death, or by imprisonment in the penitentiary for life, or by hard labor for the county for life.

§ 121. *Carnal knowledge of female under ten years of age.* Any person who has carnal knowledge of any female under the age of ten years, or abuses such female in the attempt to have carnal knowledge of her, must, on conviction, be punished, at the discretion of the jury, either by death, or by imprisonment in the penitentiary for life, or by hard labor for the county for life.

§ 122. *Carnal knowledge of married woman by falsely personating husband.*—Any person who falsely personates the husband of any married woman, and thereby deceives her, and, by means of such deception, gains access to her, and has carnal knowledge of her, must, on conviction, be punished, at the discretion of the jury, either by death, or by imprisonment in the penitentiary, or hard labor for the county, for not less than ten years; but no conviction must be had, under this section, on the unsupported evidence of the woman alone.

§ 123. *Attempt to have carnal knowledge of married woman by such deception.*—Any person who falsely personates the husband of any married woman, and thereby gains access to her, with the intent to have carnal knowledge of her, must, on conviction, be fined not less than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 124. *Forcible marriage &c. of woman.*—Any person who unlawfully takes any woman, against her will, and, by menace, force, or duress, compels her to marry him, or any other person, or to be defiled; or who unlawfully takes any woman, against her will, with the intent to compel her,

by menace, force, or duress, to marry him, or any other person, or to be defiled,—must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than five years.

§ 125. *Taking female under fourteen from father, &c., for prostitution or marriage.*—Any person who takes any female under fourteen years of age, from her father, mother, guardian, or other person having the legal charge of her, without the consent of her father, mother, guardian, or other person having the legal charge of her, for the purpose of prostitution, concubinage, or marriage, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two years.

§ 126. *Robbery.*—Any person who is convicted of robbery, must be punished, at the discretion of the jury, either by death, or by imprisonment in the penitentiary for not less than ten years, or by hard labor for the county for not less than ten years.

§ 127. *Mayhem.*—Any person who, unlawfully, maliciously, and intentionally, cuts out, or disables the tongue; puts out, or destroys an eye; cuts, bites, or strikes off an ear; cuts, bites off, slits, mutilates, or destroys the nose or lip; or cuts, bites, tears, strikes off, or disables a limb, or member, of any other person, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than twenty years.

§ 128. *Assaults with intent to murder, rob, &c.*—Any person who commits an assault on another, with intent to murder, maim, rob, ravish, or commit the crime against nature; or who attempts to poison any human being, or to commit murder by any means not amounting to an assault, must, on conviction, be punished by imprisonment in the penitentiary, or hard labor for the county, for not less than two, nor more than twenty years.

§ 129. *Using fire-arms while fighting in public place.*—Any person who, while fighting in the streets of any city or town, or at a militia muster, or at any public place, whether public in itself, or made public at the time by an assemblage of persons, uses, or attempts to use, except in self-defense, any kind of fire-arms, must, on conviction, be fined not less than two hundred, nor more than five hundred dol-

lars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 130. *Assault with cowhide &c., having pistol to intimidate.*—Any person who assaults and beats another, with a cowhide, stick, or whip, having in his possession at the time a pistol, or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, must, on conviction, at the discretion of the jury, be fined not more than two thousand dollars, or be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 131. *Accident on steamboat, from officer's negligence, or want of skill.*—Whenever any loss of human life, or any injury to any human being, occurs on board of any steamboat navigating any of the waters of this State, from negligence, or want of skill, on the part of the captain, engineer, or other officer or person engaged in the management of such boat, or any part of the machinery thereof, the officer or person from whose negligence or want of skill such loss of life or injury occurred, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 132. *Endangering life by bursting boiler of steamboat.*—If the captain of any steamboat used for the conveyance of passengers or freight, or any other officer or person having charge thereof, or the engineer having charge of the machinery, or of any part of the apparatus for the generation of steam, from gross negligence, or from ignorance, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which such steam is generated, or any apparatus or machinery therewith connected, and human life is thereby endangered, such captain, engineer, or other officer or person, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two years.

§ 133. *Endangering life by steamboat racing.*—Whenever any steamboat, while racing with another boat, or attempting to excel her in speed, bursts its boiler, or any apparatus or machinery therewith connected, and the life of any person is thereby endangered, the captain and engineer of such

boat must each, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two years.

§ 134. *Endangering life by overloading vessel.*—Any person navigating any boat or vessel for gain, who willfully receives on board thereof so many passengers, or such a quantity of freight, that by means thereof such boat or vessel sinks, or overturns, and the life of any human being is thereby endangered, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 135. *Negligence of railroad conductor, &c.*—If any engineer, conductor, or other person, having the control or management of any steam-engine running on any railroad in this State, fails to use proper precautions to prevent accidents, by ringing the bell, blowing the whistle, or checking the speed of his engine, on approaching any curve in the road, or any depot, station, or crossing of any public road, or on leaving any depot or station, he is guilty of a misdemeanor, and must, on conviction, be fined not less than one hundred, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 136. *Endangering life by railroad accident.*—If, from the negligence, carelessness, or want of proper skill, of any engineer or conductor, having the control or management of any steam-engine running on any railroad in this State, or any brake-man, the engine or cars are thrown off the track, or any other accident occurs, and the life of any human being is thereby endangered, such engineer, conductor, or brake-man must, on conviction, be fined not less than five hundred, nor more than two thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than than twelve months.

§ 137. *Obstructing railroad maliciously, &c.*—Any person who, wantonly and maliciously, injures any railroad in this State, or places any impediment or obstruction thereon, by means of which injury, impediment, or obstruction, any engine, car, or other vehicle, diverges, or is thrown from the track thereof, must, on conviction, be imprisoned

in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 138. *Injuring railroad maliciously, &c.*—Any person who, wantonly, or maliciously, injures any railroad in this State, which is in use for the transportation of passengers or merchandise, or places any obstruction or impediment thereon, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 139. *Poisoning springs, wells, &c.*—Any person who, willfully and wantonly, poisons any spring, fountain, well, or reservoir of water, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than ten, nor more than twenty years.

§ 140. *Selling poisons without precautions to prevent accidents.*—Any druggist, apothecary, or other person, who sells and delivers any poison or poisonous substance, not having the word *poison* written or printed on a label attached to the vial, box, or parcel in which the same is sold; or sells and delivers any tartar-emetic, laudanum, or morphine, not having the common name thereof written or printed on a label attached to the vial, box, or parcel containing the same; or sells, or delivers, any poison, or poisonous drug or substance, to any apprentice, or to any child under ten years of age, without the written order of the master of such apprentice, or the parent, guardian, or person having the legal charge of such child, must, on conviction, be fined not less than fifty, nor more than three hundred dollars.

§ 141. *Lynching.*—Any two or more persons, who abuse, whip, or beat any person, upon any accusation, real or pretended, or to force such person to confess himself guilty of any offense, or to make any disclosures, or to consent to leave the neighborhood, county, or State, must, on conviction, each be fined not less than five hundred dollars; and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 142. *Assaults, and assaults and batteries.*—Any person who commits an assault, or an assault and battery, on another person, must, on conviction, be fined not more than five hundred dollars; and may also be imprisoned in the

county jail, or sentenced to hard labor for the county, for not more than six months.

§ 143. *Maltreatment of convict at penal labor by officer.*—Any superintendent, guard, or other officer, having charge of convicts sentenced to hard labor for the county, who overworks, or maltreats any such convict, or inflicts upon him any other or greater punishment than he is by law authorized to inflict, is guilty of a misdemeanor, and must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 144. *Maltreatment of such convict by hirer.*—Any hirer of a convict sentenced to hard labor for the county, who overworks, or maltreats such convict, or fails to supply him with a sufficiency of good and wholesome food, and with necessary medicines and medical attention, and, when the contract requires it, with warm and comfortable clothing, and with comfortable shelter in inclement weather, is guilty of a misdemeanor, and must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 145. *Decoying off children.*—Any person, who unlawfully takes, or decoys away, any child under the age of twelve years, with intent to detain or conceal it from its parents, guardian, or other person having the lawful charge of it, must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 146. *Kidnapping.*—Any person who, forcibly, or unlawfully, confines another, or inveigles, or entices away another, with the intent to cause him to be secretly confined, or imprisoned against his will, or to be sent out of the State against his will, or to be sold elsewhere into slavery, must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than ten years.

§ 147. *Enticing away servant or apprentice.*—Any person who entices, decoys, or persuades any apprentice, or servant, to leave the service or employment of his master, must, on conviction, be fined not less than twenty, nor

more than one hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

§ 148. *Shooting and horse-racing on public road.*—Any person who discharges a gun, or any other kind of firearms, along or across any public road, or engages in a horse-race on any public road, must, on conviction, be fined not less than ten, nor more than fifty dollars.

CHAPTER IX.

OFFENSES AGAINST PROPERTY, PUBLIC OR PRIVATE.

Section 149. Burglary.
" 150. Possession of burglarious instruments, &c.
" 151. Arson in first degree.
" 152. Arson in second degree.
" 153. Arson in third degree.
" 154. Burning insured house, vessel, &c.
" 155. False affidavit, &c., to defraud insurer.
" 156. Forgery of will, deed, note, &c.
" 157. False estimate, &c., to defraud insurer.
" 158. Fraudulent conveyances.
" 159. Removing mortgaged property.
" 160. Grand larceny.
" 161. Larceny from building on fire, or from person, dwelling-house, &c.
" 162. Petit larceny.
" 163. Judgment for value of property on conviction of larceny.
" 164. Receiving stolen property.
" 165. Taking, destroying, concealing deed, &c.
" 166. Conviction of receiver before thief.
" 167. Bringing stolen property into this State.
" 168. Obtaining property by false pretenses.
" 169. Obtaining signature by false pretenses.
" 170. Obtaining property by false personation.
" 171. Embezzlement by clerk, agent, &c.
" 172. Embezzlement by common carrier.
" 173. Embezzlement by bank officers.
" 174. Embezzlement by private banker, factor, &c.
" 175. Receiving embezzled property.
" 176. Conviction of receiver before embezzler.
" 177. Failure of private banker, broker, &c., to pay over money on demand.
" 178. Taking cotton from bale by factor, &c
" 179. Taking cotton from bale by other persons.
" 180. Fraudulent conversion of cotton samples.
" 181. Buying cotton taken from bale without authority.
" 182. Injuring cotton bales by cutting, &c.
" 183. Frauds in packing cotton.
" 184. Exhibiting false samples.

" 185. Altering marks, brands, &c.
" 186. Malicious injury to animals, &c.
" 187. Injuring or defacing churches, buildings, &c.
" 188. Breaking fences, &c.; casting adrift boats, &c.
" 189. Trespass to realty; cutting down trees, &c.
" 190. Injuring mill-dam, canal, bridge, &c.
" 191. Fines, under sections 185–9, go to injured party.
" 192. Removing boundary marks or monuments.
" 193. Removing mile-stone, guide-board, &c.
" 194. Injuring telegraph line or post.
" 195. Cutting down shade-trees, shrubbery, &c.
" 196. Burning woods.
" 197. Burning pine forest willfully.
" 198. Burning pine forest negligently.

§ 149. *Burglary.*—Any person who, either in the night or day time, with intent to steal, or to commit a felony, breaks into and enters a dwelling-house, or any building within the curtilage of a dwelling-house, though not forming a part thereof; or into any shop, store, warehouse, or other building, in which any goods, merchandize, or other valuable thing, is kept for use, sale, or deposit,—is guilty of burglary, and must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than twenty years.

§ 150. *Possession of burglarious instruments, &c.*—Any person who has in his possession any implement, or instrument, designed and intended by him to aid in the commission of burglary or larceny, must, on conviction, be fined not less than one hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 151. *Arson in first degree.*—Any person who, in the night time, willfully sets fire to, or burns, any dwelling-house, steamboat, or vessel, in which there is at the time any human being; or any prison, house, or other building, which is occupied by a person lodged therein at night; or any house adjoining a dwelling-house, in which dwelling-house there is at the time a human being, is guilty of arson in the first degree, and must, on conviction, be punished, at the discretion of the jury, by death, or by imprisonment in the penitentiary, or hard labor for the county, for not less than ten years.

§ 152. *Arson in second degree.*—Any person who willfully sets fire to, or burns, any church, meeting-house, court-house, town-house, college, academy, jail, or other

building erected for public use; or any banking-house, ware-house, cotton-house, gin-house, store, manufacto ry, or mill, which, with the property therein contained, is of the value of five hundred dollars or more; or any barn, stable, shop, or office, of another person, within the curtilage of any dwelling-house, or other building, by the burning whereof any building hereinbefore specified in this section is burned; or who willfully sets fire to, or burns, any inhabited dwelling-house, or any steamboat, or vessel, in which there is at the time no human being,—is guilty of arson in the second degree, and must, on conviction, be punished by imprisonment in the penitentiary, or hard labor for the county, for not less than two, nor more than ten years.

§ 153. *Arson in third degree.*—Any person who willfully sets fire to, or burns, any house, building, boat, or vessel, or any bridge, causeway, turnpike-gate, or toll-gate, by law erected or authorized, under such circumstances as do not constitute arson in the first or second degree, is guilty of arson in the third degree, and must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months; and may also be fined not more than two thousand dollars, at the discretion of the jury.

§ 154. *Burning insured house, vessel, &c.*—Any person who willfully burns a building, or any property, which is at the time insured against fire, with intent to charge or injure the insurer; or who willfully burns, sinks, casts away, or otherwise destroys, any ship or vessel, with the intent to injure the owner of said boat or vessel, or of any property on board of the same, or the insurer of such boat, vessel, or property, must, on conviction, be punished by imprisonment in the county jail, or hard labor for the county, for not more than twelve months; and may also be fined not more than two thousand dollars, at the discretion of the jury.

§ 155. *False affidavit, &c., to defraud insurer.*—Any person who, being the master, or an officer, or mariner of any vessel, makes, or causes to be made, or swears to, any false affidavit, or protest; or, being the owner, or other person concerned in such vessel, or in any property laden on board the same, procures any such false affidavit or pro-

test to be made, or exhibits the same, with the intent to injure, deceive, or defraud the insurer of such vessel or property, must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year; and may also be fined not more than two thousand dollars, at the discretion of the jury.

§ 156. *Forgery of will, deed, note, &c.*—Any person who, with intent to injure or defraud, falsely makes, alters, forges, counterfeits, or totally obliterates, any will of real or personal property, or any deed, conveyance, or other instrument, being, or purporting to be, the act of another, by which any right or interest in property is, or purports to be transferred, conveyed, or in any way changed or affected; or any bond, bill single, bill of exchange, promissory note, or any endorsement thereof, the forgery of which does not constitute forgery in the first degree under section 93 of this code; or any cotton receipt, or receipt for the payment of money, or instrument, or writing, being, or purporting to be the act of another, by which any pecuniary demand or obligation is, or purports to be, created, increased, discharged, or diminished,— must, on conviction, be adjudged guilty of forgery in the second degree, and punished accordingly.

§ 157. *False estimate, &c., to defraud insurer.*---Any person who, being the owner, or part owner, of any steamboat, or vessel, or of any property laden, or pretended to be laden, on board thereof, or being concerned in the lading or fitting out of such steamboat or vessel, makes out and exhibits any false or fraudulent estimate of any property, laden, or pretended to be laden, on board of such steamboat or vessel, with intent to injure, deceive, or defraud the insurer of such steamboat, vessel, or property, must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year; and may also be fined not more than two thousand dollars, at the discretion of the jury.

§ 158. *Fraudulent conveyances.*—Any person who, with intent to hinder, delay, or defraud creditors, makes or receives any conveyance of property, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 159. *Removing mortgaged property.*—Any person who removes any personal property, with the intent to carry the same out of this State, for the purpose of hindering, delaying, or defrauding any person who has a claim thereto under a written instrument, and with the knowledge of the existence thereof, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 160. *Grand larceny.*—Any person who steals any horse, mare, gelding, colt, filly, or mule, or any other personal property exceeding one hundred dollars in value, is guilty of grand larceny, and must, on conviction, be imprisoned in the penitentiary, or sentenced to hard labor for the county, for not less than two, nor more than five years.

§ 161. *Larceny from building on fire, or from person, dwelling-house, &c.*—Any person who steals any personal property from any building on fire, or which was removed in consequence of an alarm of fire, or from the person of another; or who commits the crime of larceny in any dwelling-house, store-house, ware-house, shop, or steamboat, must, on conviction, if the property stolen exceeds fifty dollars in value, be punished as if he were guilty of grand larceny.

§ 162. *Petit larceny.*—Any person who steals any personal property, under any other circumstances than are specified in the last two preceding sections, is guilty of petit larceny, and must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months; and may also be fined, not more than five hundred dollars, at the discretion of the jury.

§ 163. *Judgment for value of property on conviction of larceny.*—When the defendant is found guilty of larceny, the court, judge, justice, or jury trying the issue, must assess the value of each article stolen; and the court must thereon render judgment against him for such assessed value, unless the stolen property has been returned to the owner.

§ 164. *Receiving stolen property.*—Any person who buys, receives, conceals, or aids in concealing, any personal property whatever, knowing that it has been stolen, and not having the intent to restore it to the owner, must, on conviction, be punished as if he had stolen it.

§ 165. *Taking, destroying, concealing deed, &c.*—Any person who, with intent to injure or defraud, takes, or destroys, any deed, or conveyance, of real or personal property, belonging to another, or receives, conceals, or aids in concealing such deed or conveyance, knowing it to have been taken with the intention to injure or defraud, must, on conviction, be punished as if he were guilty of grand larceny.

§ 166. *Conviction of receiver before thief.*—An offender may be tried and convicted under the last two preceding sections, although the person who stole the property has not been tried and convicted.

§ 167. *Bringing stolen property into this State.*—Any person who brings into this State any personal property, which he has stolen elsewhere, must, on conviction, be punished as if he had stolen it in this State.

§ 168. *Obtaining property by false pretenses.*—Any person who, by any false pretense, or token, and with the intent to injure or defraud, obtains from another any money, or other personal property, must, on conviction, be punished as if he had stolen it.

§ 169. *Obtaining signature by false pretenses.*—Any person who, by any false pretense, or token, and with the intent to injure or defraud, obtains from another his signature to any written instrument, the false making of which is forgery, must, on conviction, be punished as if he had forged the instrument.

§ 170. *Obtaining property by false personation.*—Any person who, by falsely personating another, and with the intent to injure or defraud, obtains or receives any property intended to be delivered to the individual personated, must, on conviction, be punished as if he had stolen it.

§ 171. *Embezzlement by clerk, agent, &c.*—Any officer, agent, or clerk of any incorporated company, or clerk, agent, servant, or apprentice of any private person or persons, who embezzles, or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, any money, or property, which has come into his possession by virtue of his employment, must be punished, on conviction, as if he had stolen it.

§ 172. *Embezzlement by common carrier.*—Any common carrier, or other person, to whom any money, or property, has been delivered, to be carried for hire, and who embezzles,

or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, such money, or property, or any part thereof, must be punished, on conviction, as if he had stolen it.

§ 173. *Embezzlement by bank officers.*—Any officer, agent, clerk, or servant, of any bank incorporated under any law of this State, who embezzles, or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, any money, property, or effects, belonging to, or in the possession of such bank, or deposited therein, must be punished, on conviction, as if he had stolen it.

§ 174. *Embezzlement by private banker, factor, &c.*—Any private banker, commission-merchant, factor, broker, attorney, or other agent, who embezzles, or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, any money, property, or effects deposited with him, or the proceeds of any property sold by him for another, must be punished, on conviction, as if he had stolen it.

§ 175. *Receiving embezzled property.*—Any person who buys or receives property, knowing that it has been embezzled, or fraudulently converted, or fraudulently secreted, with intent to prevent the recovery thereof, or to defraud the rightful owner, must be punished, on conviction, as if he had stolen it.

§ 176. *Conviction of receiver before embezzler.*—An offender may be tried and convicted under the last preceding section, although the person who embezzled the property has not been tried and convicted.

§ 177. *Failure of private banker, broker, &c., to pay over money on demand.*—Any private banker, commission-merchant, factor, broker, attorney, or other agent, who sells, or disposes of property for another, and refuses for three days after demand made by the person entitled to the same, his agent, or attorney, to pay the amount to which such person is entitled, must, on conviction, be fined not more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 178. *Taking cotton from bale by factor, &c.*—Any factor, commission-merchant, consignee, or agent, having the con-

trol of any cotton, who, with intent to defraud the owner, appropriates to his own use any cotton taken from any bale under his control, or authorizes, or knowingly permits, any other person to take from any such bale any part thereof, and to retain the same to his own use, must, on conviction, be fined not less than fifty, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 179. *Taking cotton from bale by other persons.*—Any person who, knowingly and unlawfully, takes from any bale of cotton any part thereof, without the authority of the owner, consignee, or agent, must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 180. *Fraudulent conversion of cotton samples.*—Any person who is authorized to sample cotton, and who, with intent to defraud, converts such samples to his own use, or refuses to deliver them, on demand, to the owner, consignee, or agent, within thirty days after they are taken, (unless they have, in the meantime, been destroyed or stolen without his agency, or taken out of his possession by legal process,) must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 181. *Buying cotton taken from bale without authority.*—Any person who, knowingly, and with intent to defraud, buys, or receives, any cotton taken from the bale without the authority of the owner, consignee, or agent, must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 182. *Injuring cotton bales by cutting, &c.*—Any person who, without the authority of the owner, agent, or consignee, willfully cuts, tears, or otherwise opens, any bale of cotton, must, on conviction, be fined not more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 183. *Frauds in packing cotton.*—Any person who fraudulently packs or bales any cotton, by plating or otherwise, must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 184. *Exhibiting false samples.*—Any person who fraudulently exhibits any false sample of any cotton, or of any other article or commodity, by means whereof any person is injured, must, on conviction, be fined not less than fifty dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 185. *Altering marks, brands, &c.*—Any person who, with intent to defraud, marks, or brands, any unmarked horse, mule, cow, hog, sheep, goat, or other domestic animal, the property of another, or alters, or defaces, the mark or brand of such animal, must, on conviction, be punished as if he had stolen it.

§ 186. *Malicious injury to animals, &c.*—Any person who, unlawfully and maliciously, kills, disables, disfigures, destroys, or injures, any animal, or other article or commodity of value, the property of another, must, on conviction, be fined not less than twenty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 187. *Injuring or defacing churches, buildings, &c.*—Any person who willfully injures, or defaces, any church, or building, belonging to the State, or to any county, city, town, or private person, or writes or draws figures, letters, or characters on the walls thereof, or on the fences or enclosures thereof, must, on conviction, be fined not less than ten, nor more than one hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

§ 188. *Breaking fences, &c.; casting adrift boats, &c.*—Any person who, unlawfully and maliciously, breaks, throws down, or destroys, any fence, or other enclosure, the property of another, or breaks, cuts off, or carries away from its mooring or landing, any ferry-boat, flat-boat, canoe, or other vessel, the property of another, must, on conviction, be

fined not less than twenty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 189. *Trespass to realty; cutting down trees, &c.*—Any person who, willfully and maliciously, commits any trespass on the lands of another, by cutting down, or destroying, any wood or timber growing thereon, or by severing from the freehold any produce thereof, or by severing and carrying away from the freehold any property or thing thereto attached, under such circumstances as would render the trespass a larceny if the thing severed and carried away were personal property, must, on conviction, be fined not more than two hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 190. *Injuring mill-dam, canal, bridge, &c.*—Any person who willfully injures any mill-dam, or other dam to create water-power, or any embankment necessary to support such dam; or willfully removes, injures, or destroys, any lock, bank, culvert, aqueduct, or water-weir, of any canal in this State; or wantonly obstructs, or hinders, the free use or navigation of such canal; or wantonly opens any lock-gate, puddle-gate, culvert-gate, or water-gate, of any such canal; or willfully injures, or destroys, otherwise than by burning, any public bridge, toll-bridge, causeway, turnpike gate, or other gate erected on any road by authority of law, must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 191. *Fines, under sections* 185-89, *go to injured party.* When a conviction is had under any one of the last five sections, for an injury to private property, the fine goes to the party injured.

§ 192. *Removing boundary marks or monuments.*—Any person who willfully removes, or destroys, any monument, or post, or cuts down, removes, or destroys any tree, or defaces, or alters, the marks made on such monument, post, or tree; which monument, post, or tree, was erected or used to designate the corner, or any other point, on the boundary of any lot or tract of land, must, on conviction,

be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 193. *Removing mile-stone, guide-board, &c.*—Any person who willfully destroys, or removes, any mile-stone, post, board, or guide-board, set upon any road or highway, or willfully defaces, alters, or destroys, any leters or figures thereon, must, on conviction, be fined not less than ten, nor more than fifty dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than thirty days.

§ 194. *Injuring telegraph line or post.*—Any person who willfully cuts, pulls down, destroys, or in any manner injures, any telegraph line, or any post, or part thereof, must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

§ 195. *Cutting down shade-trees, shrubbery, &c.*—Any person who, maliciously, or for the purpose of injuring an individual or the public, cuts down, destroys, or injures, any trees or shrubbery planted or preserved for shade or ornament in any public street or square, or in any yard or grounds, must, on conviction, (unless the trees or shrubbery cut down or injured belonged to him,) be fined not less than fifty, nor more than two hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

§ 196. *Burning woods.*—Any person who willfully sets fire to the woods or forest on unenclosed lands not belonging to himself, or willfully causes fire to be communicated to such woods or forests, (except during the months of February and March,) must, on conviction, be fined not less than ten, nor more than two hundred dollars.

§ 197. *Burning pine forest willfully.*—Any person who willfully sets fire to any pine forest which is used for the purpose of procuring turpentine, with the intent to injure or destroy the same, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

§ 198. *Burning pine forest negligently.*— Any person who, negligently, or carelessly, causes fire to be communicated to any pine forest which is used for the purpose of procuring turpentine, and thereby destroys or injures the same, must, on conviction, be fined not less than fifty, nor more than two hundred dollars.

CHAPTER X.

MISCELLANEOUS OFFENSES.

Section 199. Illegal toll by millers.
" 200. Illegal toll by turnpike companies, &c.
" 201. Storing gunpowder in city or town.
" 202. Hunting wild hogs.
" 203. Fire-hunting.
" 204. Selling or giving fire-arms to minor.
" 205. Catching oysters otherwise than with tongs.
" 206. Poisoning stream for fish.
" 207. Misdemeanors not specially provided for.

§ 199. *Illegal toll by millers.*—Any person who, being the owner or keeper of any public mill, or the agent or servant of such owner or keeper, takes or receives for grinding corn, wheat, or any other kind of grain, either as toll, or by sale or exchange, more than one-eighth of the grain ground, or brought to the mill to be ground, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

§ 200. *Illegal toll by turnpike companies, &c.*—Any person who, being or acting as an officer, agent, servant, or employee of any turnpike company, macadamized road company, or other incorporated road or bridge company, takes, receives, or demands, any greater charge or toll for travel or passage over such road or bridge than is authorized by the charter of such company; or, if the charter does not specify the amount of toll to be charged or taken, takes, receives, or demands, any unreasonable charge or toll, (to be determined by the jury,) must, on conviction, be fined not more than one hundred dollars.

§ 201. *Storing gunpowder in city or town.*—Any person who keeps on hand, at any one time, within the limits of any incorporated city or town, whether for sale, or for use,

more than fifty pounds of gunpowder, must, on conviction, be fined not less than one hundred dollars.

§ 202. *Hunting wild hogs.*—Any person who, without first giving notice to at least three householders in the neighborhood, hunts, catches, or kills wild hogs with dog and gun, or with either, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

§ 203. *Fire-hunting.*—Any person who, in the night time, hunts deer by fire, and with a gun, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

§ 204. *Selling or giving fire-arms to minor.*—Any person who sells, gives, or lends, to any boy under eighteen years of age, any pistol, or bowie-knife, or other knife of like kind or description, must, on conviction, be fined not less than fifty, nor more than five hundred dollars.

§ 205. *Catching oysters otherwise than with tongs.*—Any person who takes or catches oysters, by using any other implement or instrument than the oyster tongs heretofore generally used for that purpose, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

§ 206. *Poisoning stream for fish.*—Any person who takes, catches, or attempts to take or catch fish, by poisoning the stream or body of water in which they are found, or by the use of any poisonous substance put in the water, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

§ 207. *Misdemeanors not specially provided for.*—Any person who commits a public offense, which was a misdemeanor at common law, and the punishment of which is not particularly specified in this code, must, on conviction, be fined not more than five hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

Title Second.

OF PUNISHMENTS GENERALLY.

Chapter 1. Legal punishments specified; clergy abolished.
" 2. Fines.
" 3. Hard labor for the county.
" 4. Imprisonment in county jail; and herein of the police of jails, and duties of jailors.
" 5. Imprisonment in penitentiary; and herein of the lease, organization, and police of the penitentiary, the powers, duties, and compensation of its officers, the removal of convicts to the penitentiary, service of process on them, and the mode of taking their testimony.
" 6. Sentence of death.

CHAPTER I.

LEGAL PUNISHMENTS SPECIFIED; CLERGY ABOLISHED.

Section 208. Legal punishments.
" 209. Benefit of clergy.

§ 208. *Legal punishments.*—The only legal punishments in this State, besides removal from office, and disqualification to hold office, are fines, hard labor for the county, imprisonment in the county jail, imprisonment in the penitentiary, and death by hanging.

§ 209. *Benefit of clergy.*—There is no benefit of clergy in this State.

CHAPTER II.

FINES.

Section 209. When assessed by jury.
" 210. When not necessarily imposed.
" 211. Confession of judgment for fine and costs.
" 212. On default of payment &c., imprisonment or hard labor imposed.

" 213. Execution for fine and costs.
" 214. Judgment, &c., against prosecutor, for costs.
" 215. Fines go to county, and judgment accordingly.

§ 210. *When assessed by jury.*—In prosecutions by indictment, the jury shall fix and determine the amount of the fine.

§ 211. *When not necessarily imposed.*—When an offense may be punished, in addition to a fine, by imprisonment or hard labor for the county, the jury shall not be required to impose a fine, if, in their judgment, the defendant should only be punished in some other mode, but may, in such case, only find him guilty, and leave the imposition of the punishment to the court.

§ 212. *Confession of judgment for fine and costs.*—Where a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs.

§ 213. *On default of payment, &c., imprisonment or hard labor imposed.*—If the fine and costs are not paid, or a judgment confessed according to the provisions of the last preceding section, the defendant must either be imprisoned in the county jail, or, at the discretion of the court, sentenced to hard labor for the county, as follows: if the fine does not exceed twenty dollars, ten days; if it exceeds twenty, and does not exceed fifty dollars, twenty days; if it exceeds fifty, and does not exceed one hundred dollars, thirty days; if it exceeds one hundred, and does not exceed one hundred and fifty dollars, fifty days; if it exceeds one hundred and fifty, and does not exceed two hundred dollars, seventy days; if it exceeds two hundred, and does not exceed three hundred dollars, ninety days; and for every additional one hundred dollars, or fractional part thereof, twenty-five days.

§ 214. *Execution for fine and costs.*—Execution may issue for the fine and costs, or any portion thereof remaining unpaid, as in civil cases.

§ 215. *Judgment against prosecutor, &c., for costs.*—When the costs are imposed on the prosecutor, he may confess judgment for the same, with good and sufficient sureties; and failing to do so, or to pay the same presently, must be imprisoned in the county jail, or sentenced to hard labor for the county, for ten days.

§ 216. *Fines go to county, and judgment accordingly.*—All fines go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the State, for the use of the particular county.

CHAPTER III.

HARD LABOR FOR THE COUNTY.

Section 217. Under control of court of county commissioners.
" 218. Includes work on public roads, &c., and authorizes hiring of convict.
" 219. Character of labor determined by court, when.
" 220. Hiring of convicts, how made.
" 221. Bond of hirer, how conditioned, &c.
" 222. Same.
" 223. Action on hirer's bond.
" 224. Superintendent of public works; term of office, and compensation.
" 225. Appointment of superintendent.
" 226. Official oath of superintendent.
" 227. Official bond of superintendent.
" 228. Action on superintendent's bond.
" 229. Duties of superintendent.
" 230. Vacancy in office of superintendent; how filled.
" 231. Necessary supplies for convicts provided by county, and directions given by commissioners.
" 232. When convicts may be shackled, &c.
" 233. Conviction for two or more offenses.
" 234. Shortest term of labor ten days.

§ 217. *Under control of court of county commissioners.*—Hard labor for the county shall be under the superintendance and control of the court of county commissioners, who shall determine in what manner, and on what particular works, the labor shall be performed; and all convicts, sentenced to hard labor for the county, shall be under the direction and control of the court of county commissioners.

§ 218. *Includes work on public roads, &c., and authorizes hiring of convict.*—Hard labor for the county includes labor on the public roads, public bridges, and other public works in the county; and authorizes the letting of such convicts to hire to some other person, or corporation, to labor any where within the State, as may be determined by the court of county commissioners.

§ 219. *Character of labor determined by court, when.*—The court of county commissioners shall, at the first term of the court held in each and every year, or as soon thereafter as is practicable, determine whether the convicts sentenced to hard labor shall be employed in laboring on the public works of the county, or shall be let to hire to some other person or corporation; which decision of said court shall be duly entered on the records of said court, but may be changed by a like order at any subsequent term of said court.

§ 220. *Hiring of convicts, how made.*—Should the said court determine to let the convicts, or any part of them, to hire, they may do so by themselves, or by some member of their body, or other person, to be appointed by them.

§ 221. *Bond of hirer, how conditioned, &c.*—The contract of hiring shall be by bond in writing, in a penalty of double the amount agreed on for hire, payable to the county, with two good and sufficient sureties, and conditioned to pay the amount of hire agreed on, and also to furnish the convict with a sufficiency of good and wholesome food, and with medicine and medical attention when necessary.

§ 222. *Same.*—If the hiring be for a longer term than two months, or if the condition and comfort of the convict require it, the hirer may also be required to furnish to the convict specified clothing, which shall also be expressed in the bond.

§ 223. *Action on hirer's bond.*—Such bond may be put in suit, in any court having jurisdiction of the same; and the suit shall be governed by the rules governing other suits on penal bonds, and the recovery, if any, shall be paid into the county treasury.

§ 224. *Superintendent of public works; term of office, and compensation.*—Should the court of county commissioners determine to employ the persons sentenced to hard labor for the county, or any part of them, in work on the public roads, public bridges, or other public works of the county, then they are authorized to appoint a superintendent of public works, whose term of office will expire when his successor is qualified; and who shall receive for his services such compensation as shall be fixed by the court of county commissioners.

§ 225. *Appointment of superintendent.*—Such appointment shall be made at the first term of the court of county commissioners, in each and every year, or as soon thereafter as is practicable.

§ 226. *Official oath of superintendent.*—The superintendent of public works, before he enters on the discharge of his duties, shall take an oath, before some officer authorized to administer the same, to discharge the duties of his office honestly, faithfully, and impartially.

§ 227. *Official bond of superintendent.*—He shall also enter into bond, payable to the county, and approved by the judge of probate, with two good and sufficient sureties, in the penalty of one thousand dollars, conditioned that he will faithfully perform the duties of his office, obey the orders of the court of county commissioners, and will not voluntarily permit the escape of any of the convicts committed to him.

§ 228. *Action on superintendent's bond.*—The bond of the superintendent may be put in suit, and prosecuted, in all respects as is provided in section 223 of this code for suits on bonds given by hirers of convicts.

§ 229. *Duties of superintendent.*—The duties of the superintendent of public works are, faithfully to obey and carry out the orders and directions of the court of county commissioners; to see that the convicts committed to him labor faithfully; not to overwork or maltreat the convicts; to see that the food and clothing delivered to him for the convicts are given to them at the proper time; to see that they are properly housed in inclement weather; to have proper medicine and medical attention bestowed on them when necessary, and not voluntarily or negligently to permit them to escape.

§ 230. *Vacancy in office of superintendent; how filled.*—Until there shall be an election of a superintendent of public works, and in cases of vacancy in said office, the judge of probate may appoint such officer; and such appointee shall hold office until his successor is elected and qualified.

§ 231. *Necessary supplies for convicts provided by county, and directions given by commissioners.*—It shall be the duty of the court of county commissioners, to make provision out of the county treasury for suitable food, clothing, lodging, medicine, and medical attention, for such of the convicts

to hard labor for the county as are not let to hire under the provisions of this chapter; and, from time to time, to give directions, general or special, for the employment of such convicts to hard labor for the county, as are ordered to labor on the public works of the county.

§ 232. *When convicts may be shackled, &c.*—Persons sentenced to hard labor for tbe county may be confined, chained, or otherwise shackled, to prevent escape, by order either of the court trying the offender, or of the court of county commissioners, in the following cases, to-wit: 1st, when the offense committed is a felony; 2d, when the sentence to hard labor is for a term of two months, or longer; 3d, when the convict has run away, or escaped, or attempted to run away or escape, from labor for the county, to which he has been condemned; 4th, when he fails, or refuses, to labor faithfully on the work to which he is assigned; and, 5th, when, from the circumstances, it is probable such convict will attempt to run away or escape from the labor to which he is assigned.

§ 233. *Conviction for two or more offenses.*—When a convict is sentenced to hard labor for the county, on two or more convictions, the punishment on the second, or each subsequent conviction, must commence on the termination of the punishment for the preceding conviction.

§ 234. *Shortest term of labor ten days.*—Punishment by hard labor for the county shall never be for a less period than ten days.

CHAPTER IV.

IMPRISONMENT IN COUNTY JAIL; AND HEREIN OF THE POLICE OF JAILS, AND DUTIES OF JAILORS.

Section 235. Imprisonment imposed by court.
" 236. Sheriff as jailor.
" 237. Who may be confined in jail.
" 238. Commitments and discharges filed and preserved.
" 239. Jail, prisoners, &c. delivered to successor.
" 240. Penalty for violation of last section.
" 241. Men and women kept separate.
" 242. Support of prisoner furnished by himself or jailor.
" 243. Necessary clothing, medicines, &c. furnished to insolvent prisoners by county.

" 244. Spirituous liquors not allowed to prisoners.
" 245. Fees for victualling civil prisoners paid weekly.
" 246. Jail fees paid by prisoner.
" 247. Imprisonment on two or more convictions.
" 248. Removal of prisoners on account of fire.
" 249. Removal of prisoner in ill health.
" 250. Guards summoned; escape of such prisoner.
" 251. Guards summoned when jail is unsafe, to prevent escapes.
" 252. Commitment to nearest sufficient jail when county jail unsafe.
" 253. Removal of prisoners from unsafe jail.
" 254. Guards summoned; escape of such prisoner.
" 255. List of prisoners certified by sheriff to circuit judge.
" 256. United States prisoners.
" 257. Marshal liable for fees.

§ 235. *Imprisonment imposed by court.*—When an offense is punishable by imprisonment in the county jail, such imprisonment must be imposed by the court, unless the discretion is expressly conferred on the jury.

§ 236. *Sheriff as jailor.*—The sheriff has the legal custody and charge of the jail in his county, and of all prisoners committed thereto, (except in cases otherwise provided by law,) and may appoint a jailor, for whose acts he is civilly responsible.

§ 237. *Who may be confined in jail.*—In addition to convicts sentenced to imprisonment in the county jail, the jail is used as a prison for the safe-keeping or confinement of the following persons: 1st, persons committed for trial for public offenses; 2d, convicts sentenced to imprisonment in the penitentiary, until their removal thereto; 3d, persons committed for contempt, or on civil process; 4th, persons committed on failure to give security for their appearance as witnesses in any criminal case; 5th, persons charged with, or convicted of a criminal offense against the United States; and, 6th, all other persons committed thereto by authority of law.

§ 238. *Commitments and discharges filed and preserved.*—It is the duty of the sheriff, or of the jailor under his direction, to file in regular order, and safely preserve, the process or order by which any prisoner is committed to jail, or discharged therefrom, or an attested copy of such process or order.

§ 239. *Jail, prisoners, &c., delivered to successor.*—On the death, resignation, removal from office, or expiration of the term of office, of any sheriff, or of any coroner acting as

sheriff, the jail must be delivered over to his successor, or to the person authorized by law to take charge of it, together with the prisoners therein, the files of commitments and discharges, and every thing belonging or appertaining to the jail.

§ 240. *Penalty for violation of last section.*—Any person in charge of the jail, or having in his possession any papers or other thing thereunto belonging, who fails to comply with the requisitions of the last preceding section, on demand made by the party lawfully entitled thereto, is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than three hundred dollars.

§ 241. *Men and women kept separate.*—Male and female prisoners, except husband and wife, must not be kept in the same room.

§ 242. *Support of prisoner furnished by himself or jailor.* Any person committed to jail may furnish his own support, under such precautions as may be adopted by the jailor to prevent escapes; and the jailor must furnish a support to those prisoners who do not provide it for themselves.

§ 243. *Necessary clothing, medicines, &c., furnished to insolvent prisoners by county.*—Necessary clothing and bedding must be furnished by the sheriff or jailor, at the expense of the county, to those prisoners who are unable to provide it for themselves; and also necessary medicines and medical attention to those who are sick, when they are unable to provide it for themselves.

§ 244. *Spirituous liquors not allowed to prisoners.*—No person confined in jail must, on any pretext whatever, be furnished with, or allowed to receive, any spirituous or vinous liquors, except on the written order of a physician, stating that such liquor is necessary for his health; and if the jailor gives, or knowingly suffers any prisoner to receive any such liquor, he is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than one hundred dollars.

§ 245. *Fees for victualling civil prisoners.*—The fees for victualling any prisoner, committed to jail under any civil process, must be paid weekly; and if not so paid, the jailor may discharge him; but, in such case, the prisoner is not thereby exonerated from the debt.

§ 246. *Jail fees paid by prisoner.*—Every prisoner who, either before or after his commitment to jail, is convicted of a public offense, must, if he is able, pay the fees for his support, and must not be discharged, after commitment, until such fees are paid, or until he is otherwise legally discharged.

§ 247. *Imprisonment on two or more convictions.*—When a convict is sentenced to confinement in the county jail on two or more convictions, the imprisonment on the second, and on each subsequent conviction, must commence at the termination of the imprisonment on the preceding sentence.

§ 248. *Removal of prisoners on account of fire.*—When the county jail, or any building contiguous thereto, is on fire, and there is reason to apprehend that the prisoners may be thereby injured or endangered, the sheriff or jailor may remove them to a safe and convenient place, and confine them there so long as may be necessary to avoid the danger.

§ 249. *Removal of prisoners in ill health.*—When the life or health of any prisoner, who is not confined under process from any court of the United States, may be seriously endangered by longer confinement in jail, and that fact is made to appear clearly to any circuit judge, or to the judge of the city or county court of the county, such judge must, by an order in writing, direct the sheriff or jailor to remove him to some suitable place as near as may be to the jail, and there safely keep him until his health is sufficiently restored to authorize his recommitment to jail.

§ 250. *Guards summoned; escape of such prisoner.*—When any prisoner or prisoners is or are removed from the jail under the provisions of either of the last two preceding sections, the sheriff or jailor has authority, and it is his duty, to summon such guards as may be necessary to ensure their safe-keeping; and if he or the guards, negligently or voluntarily, suffer any prisoner to escape while he is thus removed from the jail, he is guilty of an escape, as if such prisoner had escaped from the jail.

§ 251. *Guards summoned when jail unsafe, to prevent escaps.*—When the county jail is insufficient, and there is reason to apprehend an escape, the sheriff has authority, and it is his duty, to summon as many guards as may be necessary to prevent an escape.

§ 252. *Commitment to nearest sufficient jail when county*

jail unsafe.—In all criminal cases, either before or after conviction, and in cases of contempt, if it be shown to the court, judge, or committing magistrate, that the jail of the proper county is insufficient for the safe-keeping of the prisoner, the commitment must be to the nearest sufficient jail; and the reason of such change must be entered on the minutes of the court, or stated in the warrant, or endorsed thereon and signed by the magistrate; and the jailor of the county to which the commitment is made, must receive and confine the prisoner on such commitment, or a certified copy of such order.

§ 253. *Removal of prisoners from unsafe jail.*—If the jail of any county is destroyed, or becomes insufficient or unsafe, any circuit judge, or the judge of the city or county court of the county, may, on the application of the sheriff, and proof of the fact, direct the removal of any prisoner or prisoners to the nearest sufficient jail in any other county; and it is the duty of such judge, in such case, to make an endorsement on the order or process of commitment, stating the reason why such removal is ordered, and to date and sign such endorsement.

§ 254. *Guards summoned; escape of such prisoner.*—When it becomes necessary to remove any prisoner from the jail of one county to another, in any case by law provided, the sheriff, or other officer having charge of such prisoner, has authority, and it is his duty, to summon such guards as may be necessary to prevent an escape; and if such prisoner escape while thus being removed, the officer having charge of him is guilty of an escape as if such prisoner had escaped from the county jail.

§ 255. *List of prisoners certified by sheriff to circuit judge.* It is the duty of the sheriff, on the first day of each term of the circuit or city court of his county, to make out and deliver to the presiding judge a certified list of the names of all the prisoners confined in the jail, and of the offenses with which they are charged, or of which they have been convicted.

§ 256. *United States prisoners.*—The sheriff or jailor must, if the jail of the county is sufficient, receive into his custody any person committed under any criminal charge or offense against the United States, and safely keep such prisoner, according to the order or process of commitment,

until duly discharged by law; and he is liable to the same penalties for the escape of such prisoner, as for the escape of a prisoner committed under the authority of this State.

§ 257. *Marshal liable for fees.*—The United States marshal must become individually responsible to the jailor for all the jail fees of any prisoner committed under the authority of the United States, as well as the fifty cents per month for the use of the jail for each prisoner, according to the provisions of the resolution of the congress of the United States, adopted on the 22d day of September, A. D. 1789.

CHAPTER V.

IMPRISONMENT IN THE PENITENTIARY; AND HEREIN OF THE LEASE, ORGANIZATION, AND THE POLICE OF THE PENITENTIARY, THE POWERS AND DUTIES OF ITS OFFICERS, THE REMOVAL OF CONVICTS, SERVICE OF PROCESS ON THEM, AND THE MODE OF TAKING THEIR TESTIMONY.

Article 1. Sentence of imprisonment.
" 2. Lease of penitentiary.
" 3. Organization; and powers, duties, and compensation of officers.
" 4. Removal of prisoners.
" 5. Police and sanitary regulations; punishments, and escapes.
" 6. Service of process, and testimony of convicts.

ARTICLE I.

Sentence of imprisonment.

Section 258. Imprisonment fixed by court.
" 259. May be for life, if no limit prescribed.
" 260. Imprisonment on two or more convictions.
" 261. Conviction after pardon, or expiration of term.
" 262. Same; first conviction elsewhere.
" 263. Effect of sentence.
" 264. Same; when for life.

§ 258. *Imprisonment fixed by court.*—When an offense is punishable by imprisonment in the penitentiary, the court

must fix the imprisonment, unless the power is expressly conferred on the jury.

§ 259. *May be for life, if no limit prescribed.*—When no maximum limit to the duration of the imprisonment is prescribed by law, the court may, in its discretion, sentence the offender to imprisonment for the term of his natural life.

§ 260. *Imprisonment on two or more convictions.*—When a convict is sentenced to imprisonment in the penitentiary on two or more convictions, the imprisonment on the second, and on each subsequent conviction, must commence at the expiration of the imprisonment on the preceding conviction.

§ 261. *Conviction after pardon, or expiration of term.*—On a second conviction of the same offense, committed after the convict has served out his term of imprisonment on the former conviction, or has been pardoned, he must be sentenced to a longer term than before, by at least one-fourth of the former term, unless that exceeds the longest term prescribed by law.

§ 262. *Same; first conviction elsewhere.*—The provisions of the last preceding section apply where the first conviction was in another State.

§ 263. *Effect of sentence.*—A sentence of imprisonment in the penitentiary terminates the right of the convict to execute the office of executor, administrator, or guardian, in the same manner as if he had been removed from office, and extinguishes all private trusts not susceptible of delegation by him.

§ 264. *Same, when for life.*—A convict sentenced to imprisonment for life, is regarded as civilly dead, but may nevertheless, at any time within six months after his sentence, make and publish his last will and testament.

ARTICLE II.

Lease of penitentiary.

Section 265. Lease discretionary with governor.
" 266. Advertisement for proposals.
" 267. Contents of proposals.

" 268. Opening of proposals.
" 269. Highest bid accepted, if unobjectionable.
" 270. Selection between equal bids.
" 271. Pardoning power not affected by lease.
" 272. Bonds given by lessee.
" 273. Failure to give bond, &c.
" 274. Property &c. inventoried by inspectors, and delivered to lessee.
" 275. Duties of lessee as warden.
" 276. Additional duties.
" 277. Inspectors' compensation paid by lessee.
" 278. Additional bonds required of lessee.
" 279. Eviction of lessee on failure to give such bonds.
" 280. Death of lessee.
" 281. Same; inspectors have control, &c., officers' salaries paid by State.
" 282. Advertisement, and re-lease.
" 283. Rent due until death of lessee or forfeiture of lease.
" 284. New lease.

§ 265. *Lease discretionary with governor.*—The governor may lease the penitentiary, for the term of six years, if, in his judgment, such lease will be conducive to the public welfare.

§ 266. *Advertisement for proposals.*—He must, prior to making such lease, give notice, by advertisement, in at least one newspaper published in each of the cities of Mobile, Montgomery, and Huntsville, and in such other newspapers published in the State as he may select, that proposals for such lease will be received, up to a specified day, not less than twenty, nor more than thirty days before the commencement of the lease; and must also designate in the notice the day on which the lease will commence.

§ 267. *Contents of proposals.*—The proposals must state the amount proposed to be paid for each year, and the names of the persons whom the applicant will offer as his sureties; and must be addressed to the governor at the seat of government.

§ 268. *Opening of proposals.*—On the day specified in the notice, or as soon thereafter as may be, the proposals must be opened by the governor, in the presence of the secretary of State, the State treasurer, and the comptroller of public accounts, or any two of them.

§ 269. *Highest bid accepted, if unobjectionable.*—Within twenty days after the proposals are opened, the proposal of the highest bidder must be accepted, if, in the opinion of the governor, he is a fit person to discharge the duties of lessee, and his proposed sureties are sufficient; if not, then

the next highest bidder, and so on; but no proposal must be accepted, which does not offer to take the labor of the convicts as a full consideration for the lease, without any payment to be made by the State.

§ 270. *Selection between equal bids.*—Between two or more proposals of the same amount, the governor may select.

§ 271. *Pardoning power not affected by lease.*—The lease of the penitentiary does not impair the governor's power to pardon or commute the punishment of convicts.

§ 272. *Bonds given by lessee.*—The lessee must give bonds, with sufficient sureties, to be approved by the governor, payable to the State of Alabama, and conditioned for the payment of the rent yearly; and a separate bond, in the penalty of twenty-five thousand dollars, with sufficient sureties, to be approved by the governor, payable to the State of Alabama, and conditioned for the faithful performance of his duties as lessee; which bonds must be recorded and filed in the office of the comptroller of public accounts, and the stipulated rent must be paid to the State treasurer.

§ 273. *Failure to give bond.*—On failure of the lessee to give the bonds required of him by the last preceding section, or to take the oaths prescribed by law, the governor may accept the proposal of the next higher bidder.

§ 274. *Property, &c., inventoried by inspectors, and delivered to lessee.*—On the approval of the bonds required to be given by the lessee, and his taking the oaths prescribed by law, the inspectors must deliver to him the keys of the penitentiary, with all the buildings and personal property thereunto belonging or appertaining; first making a correct inventory and appraisement of each article of personal property, in a book kept by them, and requiring a receipt from the lessee for the property so inventoried.

§ 275. *Duties of lessee as warden.*—The lessee is, during his term, the warden of the penitentiary; is vested with all the powers conferred on that officer, and must discharge all the duties required of him by law; and has the sole authority to direct the employment and labor of the convicts within the penitentiary, and the right to receive to his own use the proceeds of such labor.

§ 276. *Additional duties.*—In addition to the duties

devolving on him as warden, the lessee must, at his own expense, furnish such a number of competent guards as the board of inspectors may determine to be sufficient; provide a chaplain to perform divine service on Sunday, and a competent physician to attend sick convicts; supply the convicts with a sufficiency of healthy food, comfortable clothing, beds and bedding, and medicines for those who are sick; see that they are properly attended, and their wants provided for, in sickness; treat them in all respects with humanity, not imposing on them labor which is injurious to their health, nor more labor than they are able to perform; keep the convicts safely; preserve all the buildings and property in complete repair, making such repairs as may be necessary to prevent escapes; deliver all the buildings and other property, at the termination of his lease, to the person entitled to receive the same, or pay the appraised value of such personal property as he fails to deliver, and perform all and singular the other duties required of him by law.

§ 277. *Inspectors' compensation paid by lessee.*—The lessee must also pay the inspectors the compensation allowed them by law, and at such times as may be prescribed by law; and on his failure to make such payment, the same may be recovered of him and his sureties, after demand made, on three days' notice, by motion in the circuit court of Coosa county, together with interest and five per cent. damages; and on the trial of such motion, a copy of the bond, certified by the comptroller of public accounts, is competent evidence.

§ 278. *Additional bonds required of lessee.*—The governor may require additional bonds of the lessee, whenever, in his opinion, the public interest demands; and on the failure of the lessee to give such bond or bonds, within ten days after the requisition of the governor, the lease may be declared forfeited, and the governor must proceed as in case of the death of the lessee.

§ 279. *Eviction of lessee on failure to give such bonds.*—When the lease is declared forfeited, under the provisions of the last preceding section, if the lessee, or other person in possession, refuses to deliver the possession of the buildings, with the keys and all other property thereunto belonging, on demand made by the person appointed by

the governor to receive the same, the governor must issue his order, in writing, to the sheriff of Coosa county, commanding him to put such person in possession of the same, immediately; and the lessee, or other person in possession, so refusing, is guilty of a misdemeanor, and must, on conviction thereof, be fined not less than two thousand dollars, and be imprisoned in the county jail for twelve months.

§ 280. *Death of lessee.*—The death of the lessee, before the expiration of his lease, terminates the lease; and it is the duty of the inspectors immediately to notify the governor of his death, and to employ some fit person to take charge of the penitentiary as warden, and such other officers and guards as may be necessary, until the vacancy is filled as hereinafter provided.

§ 281. *Same; inspectors have control, &c., officers salaries paid by State.*—Until such vacancy is filled as hereinafter provided, the inspectors have the direction and control of the warden and other officers, under the supervision of the governor, and must direct the labor of the convicts as they may deem most advantageous to the State; and the compensation of the warden and other officers, when certified by the inspectors, and approved by the governor, must be paid out of the State treasury.

§ 282. *Advertisement and re-lease.*—On receiving notice of the death of the lessee, the governor must forthwith advertise for proposals for a new lease, if, in his judgment, a further lease will be conducive to the public welfare; and the same proceedings must be thereupon had as in case of the former lease, as in this article provided.

§ 283. *Rent due until death of lessee or forfeiture of lease.*—In case of the death of the lessee before the termination of his lease, the stipulated rent must be paid only up to the time of his death; and in case the lease is declared forfeited, under the provisions of section 278, on account of the failure of the lessee to give additional bonds when required by the governor, he is responsible for the rent only up to the time when possession is delivered to the person appointed to receive the same.

§ 284. *New lease.*—Three months before the expiration of each lease, the governor must, if, in his judgment, a further lease will be conducive to the public welfare, adver-

tise for proposals for a new lease; and the same proceedings must be thereupon had as in case of the former lease, as hereinabove provided.

ARTICLE III.

Organization; powers, duties, and compensation of officers.

Section 285. Officers of penitentiary.
" 286. Warden; appointment, and term of office.
" 287. Same; official bond.
" 288. Same; authority.
" 289. Same; duties.
" 290. Same; vacancy, how filled.
" 291. Deputy warden.
" 292. Inspectors; appointment, and term of office.
" 293. Same; president of board.
" 294. Same; minutes of proceedings, &c.
" 295. Same; rules and regulations.
" 296. Same; visits to penitentiary.
" 297. Same; annual report to governor.
" 298. Same; removal of convicts in case of contagious diseases.
" 299. Physician; appointment and removal of.
" 300. Same; vacancy, how filled.
" 301. Same; duties.
" 302. Guards; appointment, and removal of.
" 303. Same; supplied with public arms, &c.
" 304. Oath of officers.
" 305. Salary of warden and deputy.
" 306. Salary of inspectors.
" 307. Salary of physician.
" 308. Salary of guards.
" 309. Official books and papers.
" 310. Officers exempt from road and jury duty.
" 311. Governor visit annually.

§ 285. *Officers of penitentiary.*—The organization of the penitentiary includes one warden, or deputy warden, three inspectors, one physician, and as many guards as may be determined by the inspectors to be necessary.

§ 286. *Warden; appointment, and term of office.*—When the penitentiary is not leased under the provisions of the second article of this chapter, the warden is appointed by the governor, with the consent of the senate; and holds his office for the term of two years, and until his successor is qualified.

§ 287. *Same; official bond.*—The warden, unless he is also the lessee, must, before entering on the duties of his

office, give bond in the penalty of twenty-five thousand dollars, payable to the State of Alabama, and conditioned for the faithful performance of his duties as warden, and for the payment of all moneys coming into his hands for which he may be accountable; which bond must be recorded and filed in the office of the comptroller of public accounts, and may be sued on like other official bonds.

§ 288. *Same; authority.*—The warden has the charge and custody of the penitentiary, and of all the convicts therein, with all the lands, buildings, furniture, tools, implements, stock, provisions, and other property of whatsoever kind thereunto belonging; and must receive and pay out all moneys.

§ 289. *Same; duties.*—It is the duty of the warden to examine daily into the state of the penitentiary, and the health, conduct, and safe-keeping of the convicts; to superintend all the mechanical and manufacturing operations of the penitentiary; to receive all manufactured articles, and to sell the same, for cash, for the benefit of the State; to take proper vouchers for all moneys paid out; to keep full and regular accounts, in suitable books, of all receipts and disbursements; to deposit quarterly in the State treasury all moneys in his hands arising from the sale of manufactured articles, after defraying the current expenses of the institution; and, on the first day of October in each year, make a report to the inspectors, giving a full and detailed account of all the operations of the institution during the past year.

§ 290. *Same; vacancy, how filled.*—When the penitentiary is not leased, a vacancy in the office of warden is filled by the governor; and such appointee holds office until the end of the next session of the general assembly, and until his successor is qualified.

§ 291. *Deputy warden.*—The deputy warden is appointed by the warden, by and with the approval of the inspectors, and, in the absence of the warden, has all the powers of that officer; and for all his acts the warden is responsible on his official bond.

§ 292. *Inspectors; appointment, and term of office.*—The inspectors are appointed by the governor, with the consent of the senate, and hold office for the term of two years, and until their successors are qualified.

§ 293. *Same; president of board.*—The board of inspectors shall, from time to time, choose one of their number to act as president, whose duty it shall be to preside at all meetings of the board, and who has authority to call a meeting of the board whenever, in his opinion, the exigency requires.

§ 294. *Same; minutes of proceedings, &c.*—The inspectors must keep, or cause to be kept, regular minutes of all their meetings and proceedings; which must be signed by them, and preserved in the penitentiary.

§ 295. *Same; rules and regulations.*—The inspectors must, from time to time, establish rules and regulations for the direction of the officers of the penitentiary in the discharge of their duties, for the government and discipline of the convicts, and the custody and preservation of the public property; which rules and regulations must be submitted to the governor for approval, and may be modified or annulled by him; and a copy of all the rules approved by him, certified by the inspectors, must be delivered to the warden, who may, from time to time, propose in writing to the inspectors such alterations therein as he may deem advisable.

§ 296. *Same; visits to penitentiary.*—The penitentiary must be visited by one of the inspectors at least once each week, and by the board at least once a month, for the purpose of inspection and examination into its condition and management; and they shall forthwith report to the governor, in writing, all violations of the rules, or omissions, or neglect of duty by any of the officers.

§ 297. *Same; annual report to governor.*—The inspectors must, at least ten days before the commencement of each session of the general assembly, transmit to the governor a report of the transactions of the penitentiary during the past twelve months; showing the number of convicts confined, the offenses of which they were convicted, the counties from which they came, the term of imprisonment to which they were respectively sentenced, their ages, former occupations, and conduct during the year; also, the number and names of all who have been pardoned, or discharged, or who have died during the year, with the corresponding dates, and the particular disease supposed to have caused each death.

§ 298. *Same; removal of convicts in case of contagious diseases, &c.*—The inspectors may, with the approval of the governor, cause the convicts to be removed to such place of security, within the State, as they may deem expedient, whenever the prevalence of any epidemic, infectious, or contagious disease, or any other urgent necessity, may render such removal proper; taking all necessary precautions to ensure the safe-keeping of the convicts, and to prevent their escape when removed.

§ 299. *Physician; appointment, and removal of.*—The physician of the penitentiary is appointed by the warden, with the consent of the inspectors; and is removable by the governor, on the complaint of the inspectors, for incompetency, or neglect of duty.

§ 300. *Same; vacancy, how filled.*—A vacancy in the office of physician is filled by the warden, with the consent of the inspectors; or by the inspectors alone, if the warden fails to appoint within three days after the vacancy occurs.

§ 301. *Same; duties.*—It is the duty of the physician to visit the hospital of the penitentiary at least every other day, and as much oftener as may be necessary; to prescribe for convicts who are sick, and direct their regimen, clothing, and cleanliness; to report forthwith to the inspectors any failure on the part of the warden to provide for their necessary wants; and keep a regular journal, in which shall be entered the names of all convicts under his charge in the hospital, with the dates of their entrance, discharge, or death, their respective diseases or complaints, and the prescriptions ordered for them; which journal shall always remain in the hospital, and be open to inspection.

§ 302. *Guards; appointment, and removal of.*—The guard at the penitentiary consists of one sergeant, and as many men as the inspectors may deem necessary; who are appointed by the warden, are under his direction and control, and may be removed by him at pleasure.

§ 303. *Same; supplied with public arms, &c.*—The guard must be supplied by the governor, from the public arsenal, with suitable arms and accoutrements; for which the warden must give his receipt, and is responsible for the same on his official bond.

§ 304. *Oath of officers.*—Every officer of the penitentiary shall, before entering on the duties of his office, take and

subscribe, before some officer authorized to administer oaths, the following oath: "I, ———, do solemnly swear," (or affirm, as the case may be,) "that I will support the constitution of the United States, and the constitution of the State of Alabama, so long as I remain a citizen thereof; and that I will faithfully execute and discharge all the duties required of me as ——— of the Alabama penitentiary, and observe all the rules and regulations prescribed for the government of said institution, so far as concerns my office, and will in no case ill-treat or abuse any convict under my charge or control, nor inflict upon him any other or greater punishment than may be prescribed by said rules and regulations: so help me God."

§ 305. *Salary of warden and deputy.*—The salary of the warden, when he is not also the lessee, is twenty-five hundred dollars, payable quarterly; and of the deputy warden, when the penitentiary is not under lease, seven hundred and fifty dollars, payable quarterly.

§ 306. *Salary of inspectors.*—The salary of the inspectors is two hundred dollars each, payable quarterly; but any inspector who fails to attend three successive monthly meetings, thereby forfeits his salary for the quarter, and his office shall be considered vacated.

§ 307. *Salary of physician.*—The salary of the physician is five hundred dollars, payable quarterly.

§ 308. *Salary of guards.*—The salary of the sergeant of the guard, when the penitentiary is not leased, is five hundred dollars, payable quarterly; and of each one of the guards, besides rations, three hundred and sixty dollars.

§ 309. *Official books and papers.*—The warden shall cause to be preserved certified copies of all his official correspondence with the governor, inspectors, and other public officers, which, together with all books, accounts, vouchers, and documents, relating to the affairs of the penitentiary, shall be considered as public documents, and be kept on file in the penitentiary.

§ 310. *Officers exempt from road and jury duty.*—All the officers of the penitentiary are, during their continuance in their respective offices, exempt from working on the public roads, and from serving as jurors.

§ 311. *Governor visit annually.*—The governor must visit the penitentiary, for the purpose of examining into its

condition, at least once a year, and as much oftener as he may deem proper.

ARTICLE IV.

Removal of prisoners to penitentiary.

Section 312. Convicts removed from jail within five days after close of term.
" 313. Failure to remove punishable as misdemeanor.
" 314. Guards.
" 315. Additional guards.
" 316. Refusal to act as guard punishable as misdemeanor.
" 317. Route to be traveled.
" 318. Guards under control of sheriff.
" 319. Deputy may act as sheriff.
" 320. Officers and guards privileged from arrest.
" 321. Convicts confined in jail en route.
" 322. Delivery to warden.
" 323. Voluntary escape by officer or guard.
" 324. Escapes by convict.
" 325. Removal of convict on reversal of judgment.
" 326. Convicts imprisoned on commuted sentence.
" 327. United States prisoners.

§ 312. *Convicts removed from jail within five days after close of term.*—It is the duty of the sheriff, within five days after the adjournment of each term of the circuit or city court, to remove from the county jail all convicts who have been sentenced to confinement in the penitentiary, except those whose sentence has been postponed in order that an application for pardon may be made, and convey them with all convenient dispatch to the penitentiary, there to be confined according to law.

§ 313. *Failure to remove punishable as misdemeanor.*—Any sheriff who, without good excuse, to be determined by the court, fails to remove any convict from the county jail according to the provisions of the last preceding section, forfeits all compensation for the subsequent removal of such convict, and is also guilty of a misdemeanor; and, on conviction thereof, must be fined five hundred dollars.

§ 314. *Guards.*—For his assistance in the removal of convicts to the penitentiary, the sheriff must summon a sufficient guard, not exceeding two for each prisoner; but, if that number should not be deemed sufficient, the presid-

ing judge of the circuit or city court may authorize and direct him, in writing, to summon such additional number as may be therein specified.

§ 315. *Additional guards.*—If any of the guards who are summoned, from sickness or any other cause, become unable to proceed with the prisoners; or if a stronger guard is rendered necessary by any attempt to rescue a convict, or by any other unforeseen danger, the sheriff may summon such additional guards as he may deem necessary, in any county through which he may pass.

§ 316. *Refusal to act as guard punishable as misdemeanor.* Any person, under fifty years of age, who is summoned as a guard to assist in conveying a convict to the penitentiary, and who refuses to attend, without a good excuse, to be determined by the court, is guilty of a misdemeanor, and, on conviction thereof, must be fined one hundred dollars.

§ 317. *Route to be traveled.*—In conveying convicts to the penitentiary, it is the duty of the sheriff to travel the usual land route; and he has no authority, in any case, to carry a convict into or through another State.

§ 318. *Guards under control of sheriff.*—The guards are under the direction and control of the sheriff, and must obey his commands and instructions in relation to the safe conveyance of the prisoners; and any guard refusing to obey the commands, or violating the instructions of the sheriff, is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than one hundred dollars.

§ 319. *Deputy may act for sheriff.*—The sheriff may, for good cause shown, be excused by the judge of the circuit or city court from personal attendance in the conveyance of prisoners to the penitentiary; but he must, in such case, substitute in his place a trustworthy deputy, who, in the discharge of the duties thus devolved on him, is invested with all the powers, and subject to all the responsibilities of the sheriff.

§ 320. *Officer and guards privileged from arrest.*—The officer and guards, engaged in conveying any convict to the penitentiary, are privileged from arrest, except for felony or breach of the peace, while going to, and returning from the penitentiary; allowing one day for every twenty miles from the court-house of the county in which they were summoned.

§ 321. *Convicts confined in jail en route.*—It is the duty of all jailors, on the demand of the officer in charge of any convict or convicts being conveyed to the penitentiary, to receive and safely keep such convict or convicts, for the legal charge for victualling prisoners, whenever such officer may deem it necessary to have them secured for the night, or for any longer time they may be necessarily detained.

§ 322. *Delivery to warden.*—Each convict must be delivered to the warden of the penitentiary immediately on his arrival, together with a certified copy of his sentence; and a receipt must be given by the warden to the officer delivering him.

§ 323. *Voluntary escape by officer or guard.*—Any sheriff, deputy sheriff, guard, or jailor, having charge of a convict sentenced to imprisonment in the penitentiary, who voluntarily suffers such convict to escape from custody, must, on conviction, be sentenced to imprisonment in the penitentiary, for the term to which such convict was sentenced; or, if such convict has been retaken on pursuit, and delivered to the warden of the penitentiary, for any less term in the discretion of the court.

§ 324. *Escapes by convict.*—All statutory provisions, in regard to escapes and attempts to escape from the penitentiary by convicts, are applicable to escapes and attempts to escape by them while being conveyed to the penitentiary.

§ 325. *Removal of convict on reversal of judgment.*—If any judgment of conviction is reversed, and the cause remanded, after the convict has been conveyed to the penitentiary, he may be removed to the county in which he was tried, by the sheriff of that county or his deputy, in the same manner in which he was removed to the penitentiary; and all the provisions of this article, in regard to the authority, duties, and compensation of officers, and escapes or attempts to escape by convicts, are applicable to such removal.

§ 326. *Convicts imprisoned on commuted sentence.*—The warden must also receive into the penitentiary, on the written order of the governor, any convict whose sentence has been commuted, according to law, to imprisonment in the penitentiary; and must confine such person according

to the terms of the commutation, and the rules and regulations established by law.

§ 327. *United States prisoners.*—The warden must also receive into the penitentiary all convicts sentenced to imprisonment therein by any court of the United States held in this State, and must safely keep and employ them, according to the rules and regulations of the institution, until the expiration of the term for which they were sentenced, or until they are otherwise discharged by law.

ARTICLE V.

Police and sanitary regulations; punishments, and escapes.

Section 328. Description of convict recorded; person searched.
" 329. Warden to take charge of money, &c.
" 330. Quarantine.
" 331. Clothes preserved or sold by warden.
" 332. Sanitary regulations, cleanliness, &c.
" 333. Uniform.
" 334. Bibles.
" 335. Diet, and meals.
" 336. Letters, and communication with friends.
" 337. Spirituous liquors.
" 338. Labor, conversation, and confinement by night.
" 339. Men and women kept separate.
" 340. Voluntary extra labor.
" 341. Labor outside of penitentiary.
" 342. Wards, and turnkeys.
" 343. Conversation between officers and convicts.
" 344. Solitary confinement.
" 345. Diet during such confinement.
" 346. Other punishments.
" 347. Punishment reported to inspectors.
" 348. Sick convict removed to hospital.
" 349. Insane convicts.
" 350. Death of convict; inquest.
" 351. Discharge.
" 352. Murder by convict.
" 353. Assaults, and conspiracies.
" 354. Escapes, and attempts to escape.
" 355. Such convicts confined until trial.
" 356. Aiding convict to escape.
" 357. Voluntary escape by officer.
" 358. Escapes by United States prisoners.
" 359. Proceeding for recapture of escaped convicts.
" 360. Violation of duty by officer.
" 361. Proof of conviction on trial of offenses above specified.
" 362. Rules printed, explained to convicts, &c.

§ 328. *Description of convict recorded; person searched.* It is the duty of the warden, upon the reception of any convict into the penitentiary, to take his or her height, and cause the same to be entered in a book, with the time when such convict was received, his name, age, and complexion; color of his hair and eyes; the county in which convicted, the nature of the crime, period of imprisonment, and place of nativity; and the baggage and person of every convict must be carefully searched, and every instrument taken therefrom by which he may effect his escape.

§ 329. *Warden to take charge of money, &c.*—The warden must also take in charge any property, or money, or other thing of value, in the possession of any convict at the time of his entering the penitentiary, and pay or deliver the same to such person as the convict may in writing direct, or to the convict on his discharge; or to his personal representatives, in case of his death previous thereto; and should no personal representative be appointed within six months after his death, then into the State treasury.

§ 330. *Quarantine.*—To prevent the introduction of contagious disorders, the warden must cause every person sentenced to the penitentiary to be washed, cleansed, and kept entirely apart from the other convicts until it is certified by the physician that he may be permitted to join them in labor without danger to their health.

§ 331. *Clothes preserved or sold by warden.*—The warden must also cause the clothes of the convicts when received into the penitentiary to be washed, and carefully put away, place a ticket with their names on the same, to be returned to them on their discharge; or, if the convict directs the sale of them, to dispose of them to the best advantage, and retain the money arising from such sale, to be paid to the convict on his release, or to be disposed of as provided for in section 329.

§ 332. *Sanitary regulations, cleanliness, &c.*—The warden must cause the prisoners to wash themselves every morning, and immediately before meals; to put on clean under garments at least once a week, and the males to have their beards shaved as often as may be necessary; their cells swept every morning, and fumigated during the summer and fall season, once a week or oftener, with some disinfecting substance; and to adopt such other measures as may be

recommended by the physician, or directed by the board of inspectors, to promote neatness and health.

§ 333. *Uniform.*—All convicts must be clothed, during the term of their imprisonment, in a comfortable manner, in coarse and cheap clothing, made in a uniform and peculiar style, so as to distinguish them from other persons; the number of suits, material and style to be determined by the board of inspectors.

§ 334. *Bibles.*—A bible must be furnished by the warden to each convict, which he must be permitted to read, in his cell, when he is not engaged in work.

§ 335. *Diet, and meals.*—The diet of the prisoners, in quantity and quality, must be such as is directed by the board of inspectors; the provisions sound and wholesome, and the regular hours of meals announced by the ringing of a bell, at the sound of which the convicts must assemble at their respective tables, except the sick, who must be furnished according to the directions of the physician.

§ 336. *Letters, and communication with friends.*—All letters sent to any convict, or written by any convict, must be first read by the warden, or by some other person acting for him, and, if nothing is contained therein which may promote crime, may be delivered or mailed according to the convict's direction; any relative or friend may be allowed to speak to any convict, in the presence of the warden, or deputy warden, when, in the opinion of that officer, the condition of such convict's family or property may require it; and all information concerning any convict, must be furnished to his friends, on personal application, or by letter post paid, directed to the warden.

§ 337. *Spirituous liquors.*—No spirituous or intoxicating liquors must, under any pretense, be introduced into the penitentiary, except such as may be necessary for the hospital department, or for the use of the families of officers residing within its precincts; and any officer who permits any such liquors to be furnished to any convict, except on the written prescription of the physician of the penitentiary, forfeits all wages due him, must be forthwith dismissed from his office, and is guilty of a misdemeanor, on conviction of which he must be fined not less than one hundred dollars.

§ 338. *Labor, conversation, and confinement by night.*—All convicts must, when in health, be kept at labor; must not be allowed to hold any communication with persons outside of the prison, nor to have any intercouse with each other by day; and must be confined in separate cells at night.

§ 339. *Men and women kept separate.*—The male and female convicts must, at all times, and on all occasions, be kept separate and apart; and the females, as well as the males, must be confined in separate cells at night.

§ 340. *Voluntary extra labor.*—The convicts must be permitted to work for themselves after the performance of their daily labor, in such way as the warden may approve, and under such regulations as may be adopted by the board of inspectors; but they shall not be allowed to perform any work in their cells, without the permission of the warden. The work done by the convicts under this section shall be disposed of by the warden, and the money received therefor remain in his hands, to be disposed of according to the provisions of section 329, or expended in the purchase of such articles as the convict may direct, not inconsistent with the rules of the penitentiary.

§ 341. *Labor outside of penitentiary.*—The inspectors may, in their discretion, authorize the warden to employ any number of the convicts outside of the prison walls, but always under the supervision of as many guards as they may prescribe; and for the escape of such convicts, while so employed, the warden and guards are responsible as for other escapes.

§ 342. *Wards, and turnkeys.*—The warden must cause all rooms and cells to be numbered and divided into as many wards as there may be turnkeys, allotting to each ward, as nearly as may be, an equal number of rooms and cells; and assign each ward to a turnkey, whose duty it is, under the direction of the warden, to examine every evening the doors, beds and cells of the convicts; to search and lock them up before dark, and not permit them to carry into their cells any instrument that may assist them in escaping; to extinguish carefully all the fire in the work-shops; and a bell must be rung every evening, at not later than ten o'clock, at which time every light in the cells of the convicts must be put out.

§ 343. *Conversation between the officers and convicts.*—No officer or person holding any appointment, the duties of which are to be discharged within the precincts of the penitentiary, must say any thing in relation to the police thereof, in the presence of a convict, except it be to direct him in his duty, or to admonish him for a delinquency; neither must he hold any conversation with the convicts, or allow them to speak to him on any subject, unless it relate to necessary duty or business.

§ 344. *Solitary confinement.*—If any convict neglects or refuses to perform the labor assigned him, or willfully injures any of the materials, implements or tools, or engages in conversation with any other convict, or in any other manner violates any of the regulations of the penitentiary, he may be punished by solitary confinement, for a period not exceeding thirty days for each offense, at the discretion of the warden or person acting in his place.

§ 345. *Diet during such confinement.*—Every convict punished by solitary confinement, must be confined in a solitary cell, and fed with bread and water only during such confinement, unless the physician certify to the warden that the health of such convict requires other diet.

§ 346. *Other punishments.*—No convict must be punished in any other way than is herein provided, except by the authority of the board of inspectors.

§ 347. *Punishment reported to inspectors.*—The warden, or person acting in his place, must, in each case in which he punishes a convict, report the same in writing to the president of the board of inspectors, within five days after the punishment is awarded, stating the offense and the punishment; and the president may convene the board to consider the case so reported; and if it appears to the board that the punishment was improperly awarded or inflicted, the same must be so entered on their minutes.

§ 348. *Sick convict removed to hospital.*—Whenever any convict complains of such illness as requires medical aid, notice must be given to the physician, who must visit such convict; and if, in his opinion, the illness is such as requires the removal of the convict to the hospital, the warden must have him removed thereto, where he must remain until the physician determines that he can leave it without injury to his health.

§ 349. *Insane convicts.*—The names of all convicts who, in the opinion of the physician, have become insane, must be forthwith reported by him to the warden, who shall immediately cause such convicts to be removed to the hospital, and must also report their names to the governor, in order that proper steps may at once be taken for their removal from the penitentiary.

§ 350. *Death of convict; inquest.*—Whenever any convict dies in the penitentiary, the warden must forthwith notify some one of the inspectors, if practicable, and summon at least one justice of the peace of Coosa county to examine the body of the deceased; whose duty it is to attend and ascertain, as nearly as may be, the cause of his death, and report the same to the board of inspectors; and the warden must not permit the body to be buried until such examination is had. If the body is not applied for by the friends of the deceased within a convenient time after such examination, the warden must have it decently interred in the burial place, to be provided in the vicinity of the penitentiary.

§ 351. *Discharge.*—Each convict must, at the expiration of his term of confinement, be discharged from the penitentiary, and must be furnished by the warden with a decent suit of clothes, and with money sufficient to enable him to reach his destination, not exceeding ten dollars; but no convict must be discharged, except at his own request, if he is sick at the time his term expires.

§ 352. *Murder by convict.*— Any convict, sentenced to imprisonment for life, who commits murder in the first degree while such sentence remains in force against him, must, on conviction thereof, suffer death.

§ 353. *Assaults, and conspiracies.*—Any convict who assaults an officer of the penitentiary, with intent to kill or maim him, or conspires with any other person for the purpose of killing or maiming any officer, must, on conviction thereof, if his former sentence was for life, suffer death; and, if his former sentence was for a term less than life, be imprisoned for an additional term, not less than five, nor more than twenty years.

§ 354. *Escapes, and attempts to escape.*—Any convict who escapes, or attempts to escape from the penitentiary, before the expiration of the term for which he was sentenced,

must, on conviction thereof, if his former sentence was for a term less than life, be imprisoned for an additional term, not less than two, nor more than five years; and if his former sentence was for life, must suffer death.

§ 355. *Such convicts confined until trial.*—Any convict who commits any one of the offenses prohibited by the last three preceding sections, or any other public offense, during his confinement in the penitentiary, must be confined therein, like other convicts, until his trial takes place; but, after the expiration of his former term of confinement, if the subsequent offense is bailable, he may be discharged from confinement, on giving sufficient bail for his appearance.

§ 356. *Aiding convicts to escape.*—Every person who conveys into the penitentiary any disguise, instrument, tool, weapon, or other thing, useful to aid any convict in escaping therefrom, with intent to facilitate the escape of such convict; or who aids any convict in any attempt to escape, whether such escape is effected or not; or who rescues, or attempts to rescue any convict confined therein, or held in custody of any officer or person under sentence of imprisonment therein, must, on conviction, be punished by imprisonment in the penitentiary, not less than two, nor more than ten years.

§ 357. *Voluntary escape by officer.*—If any officer, or other person employed in the penitentiary, voluntarily suffers any convict imprisoned therein to escape, he must, on conviction, be imprisoned in the penitentiary for a period equal to the unexpired term of such convict, but in no case less than two years.

§ 358. *Escapes by United States prisoners.*—If any convict committed by the courts of the United States, escapes, or attempts to escape out of the penitentiary, he is subject, on conviction, to the same punishment as if he had been committed by virtue of a conviction under the laws of this State; and the warden, or any other officer having charge of such convict, is liable to the same penalties and punishment, for any neglect or violation of duty in respect to the custody of such convict, as if he had been committed under a conviction and sentence under the laws of this State.

§ 359. *Proceedings for recapture of escaped convicts.*—Whenever any convict in the penitentiary escapes there-

from, it is the duty of the warden to take all proper measures for his apprehension; and for that purpose he must forthwith communicate to the governor the fact of such escape, the time when, and the circumstances under which it was committed, together with a particular description of the convict, his age, size, complexion, color of hair and eyes, from what county committed, for what offense, and when.

§ 360. *Violation of duty by officer.*—If any officer, or person employed in the penitentiary, suffer any convict under sentence of solitary confinement to be at large, out of the cell assigned him, unless directed by the physician to remove him to the hospital on account of sickness, or allows any convict to be conversed with contrary to the regulations of the penitentiary, he must, on conviction, be punished by fine, not less than one hundred, nor more than five hundred dollars.

§ 361. *Proof of conviction on trial of offenses above specified.*—On the trial of any convict, or other person, for any offense prohibited by any section of this article, the fact of confinement in the penitentiary is presumptive evidence of a legal conviction and sentence of imprisonment; and a copy of the transcript of the conviction and sentence filed with the warden, and certified by him to be correct, shall be received as evidence of such sentence.

§ 362. *Rules printed, explained to convicts, &c.*—Such of the foregoing regulations, with all others that may hereafter be adopted by the legislature or inspectors, with the approbation of the governor, which it is necessary that the convicts should know, together with all the sections of this article in relation to escapes, must be printed so as to be conveniently read, and set up in each workshop and cell, in a conspicuous place, and also read and explained by the warden to each convict on his admission to the penitentiary.

ARTICLE VI.

Service of process, and testimony of convicts.

Section 363. Service of process.
" 364. Answer in chancery.

" 365. Testimony for State in criminal case.
" 366. Fees, guards, escapes, &c., on such removal.
" 367. Testimony in civil suits.
" 368. Testimony for defendant in criminal case.

§ 363. *Service of process.*—When any suit is brought against any convict who is imprisoned in the penitentiary, the summons or subpœna must be delivered to the warden, who must hand a copy to the convict, and return the original by mail, or by private conveyance, to the proper court, endorsing on the envelop the title of the suit and the character of the process; and any *mesne* process, which it may be necessary to issue in the progress of any suit, may be served in like manner; and if no appearance is entered for the convict, the court must require the plaintiff to prove his demand, or course of action.

§ 364. *Answer in chancery.*—When any convict in the penitentiary is made a defendant to any suit in chancery, and his answer to the bill is required, a commission must be issued by the register of the court in which the suit is pending, directed to the inspectors of the penitentiary, and authorizing and commanding some one of them to take the convict's answer. If the convict will voluntarily answer the bill, he may be allowed the aid of counsel to prepare his answer, at such convenient times as may be directed by the inspector executing the commission; and the answer must be sworn to before the inspector taking the same, and be returned by him, with the commission, to the proper court. But, if the convict refuses or neglects to answer, for thirty days after he is required by the inspector to answer, the inspector must return the commission, and certify thereon such failure or neglect to answer; after which a decree *pro confesso* may be entered against the convict, unless the chancellor, for good cause shown, allows him further time to answer.

§ 365. *Testimony for State in criminal case.*—The presiding judge of any circuit or city court, having reason to believe that the testimony of any convict in the penitentiary is necessary in any criminal prosecution by the State, and that other evidence cannot be obtained on behalf of the State, may order a writ to be issued by the clerk, commanding the warden of the penitentiary to have the convict before the court, on a specified day, to give testimony in

the particular case for the State; and the warden must have such convict before the court, on the specified day, according to the mandate of the writ, employing a trustworthy deputy, with a sufficient guard, to convey such convict to the court, and, after he has testified, return him to the penitentiary with all convenient dispatch.

§ 366. *Fees, guards, escapes, &c., on such removal.*—For conveying any convict to or from the penitentiary, under the provisions of the last section, the warden is entitled to the same fees and the same number of guards as are allowed to sheriffs in conveying convicts to the penitentiary; the guards and the convict are subject to the same liabilities and penalties for an escape, or attempt to escape; the sheriff or jailor of the county must, on the demand of the officer having charge of the convict, receive and safely keep such convict in the county jail during his attendance on the court, or while delayed in passing through the county, and is entitled to the usual legal charge for victualling prisoners.

§ 367. *Testimony in civil suits.*—The testimony of convicts in the penitentiary may be taken in civil suits, on interrogatories and notice, as in other cases of taking testimony by interrogatories; the commission being directed to the inspectors of the penitentiary, and executed by any one of them; and the convict's answer being taken on oath, and returned, with the commission, as in other cases.

§ 368. *Testimony for defendant in criminal cases.*—The defendant in any criminal prosecution may, in like manner, take the testimony of any convict in the penitentiary, on interrogatories and notice; but the notice in such case, with a copy of the interrogatories, must be served on the solicitor of the circuit in which the prosecution is pending.

CHAPTER VI.

SENTENCE OF DEATH.

Section 369. When sentence executed.
" 370. By whom executed.
" 371. Where executed.
" 372. Officers and physicians present.

" 373. Counsel and relatives of prisoner, &c.
" 374. Pregnancy of female convict.
" 375. Same; fact determined by jury.
" 376. Same; sentence suspended.
" 377. Same; sentence executed, when.
" 378. Convict sentenced, but not executed.
" 379. Same; apprehension and commitment of.

§ 369. *When sentence executed.*—Whenever any person is sentenced to the punishment of death, the court must direct that he be hanged by the neck until he is dead; and such sentence must be executed by the proper executive officer of the law, on such day as the court may appoint, not less than four, nor more than eight weeks from the time of the sentence, unless such court suspends the execution, on account of the reference of some matter of law arising on the trial, for the determination of the supreme court.

§ 370. *By whom executed.*—The sentences of courts directing the execution of a person according to the provisions of the last preceding section, must be executed by the sheriff, or his deputy, or the officer acting in his place.

§ 371. *Where executed.*—The punishment of death must be inflicted, either in the prison where the convict is confined, or within the enclosed grounds of such prison, if there be any; or, if the arrangement of the prison be such that this cannot be done, then in such place as may be selected by the officer whose duty it is to inflict such punishment.

§ 372. *Officers and physicians present.*—Such officer must give at least three days' previous notice to the judge of the probate court, the clerk of the circuit or city court, at least three justices of the peace, if there be so many in the county, and the physicians in the neighborhood, who may be present and witness the execution; and the persons thus attending must make out and sign a certificate, in writing, declaring that they witnessed the execution of the convict pursuant to his sentence.

§ 373. *Counsel and relatives of prisoner, &c.*—Such officer must also permit the counsel of the convict, and such ministers of the gospel as he may desire, and his relations, to be present; and also such officers of the prison, deputies, constables, military guard, and other assistants, as he may think proper.

§ 374. *Pregnancy of female convict.*—If there is reason

to believe that a female convict is pregnant, the sheriff must, with the concurrence of a judge of the circuit or city court, summon a jury of six disinterested persons, as many of whom must be physicians as practicable.

§ 375. *Same; fact determined by jury.*—The sheriff must also give notice to the solicitor, or, in his absence, to any attorney who may be appointed by a circuit or city judge to represent the State, and who has authority to issue subpœnas for witnesses; and the jury, under the direction of the sheriff, or officer acting in his place, must proceed to ascertain the fact of pregnancy; and must state their conclusion in writing, signed by them and the sheriff.

§ 376. *Same; sentence suspended.*—If such jury are of opinion, and so find, that the convict is with child, the sheriff, or officer acting in his place, must suspend the execution of the sentence, and transmit the finding of the jury to the governor.

§ 377. *Same; sentence executed, when.*—Whenever the governor is satisfied that such convict is no longer with child, he must issue his warrant to the sheriff, appointing a day for her to be executed, according to her sentence; and the sheriff, or other officer, must execute the sentence of the law, on the day so appointed.

§ 378. *Convict sentenced, but not executed.*—When, from any cause, any convict sentenced to death has not been executed pursuant to such sentence, the same stands in full force, and the circuit or city court of the county in which such convict was tried, on the application of the solicitor of the circuit, must direct the convict to be brought before it, or, if necessary, must issue an order in writing to that effect; and upon such convict being brought before such court, it must inquire into the circumstances, and, if no legal reason exists against the execution of such sentence, must sentence the convict to execution on a day to be by such court appointed.

§ 379. *Same; apprehension and commitment of.*—If such convict is at large, any magistrate may issue a warrant for his apprehension; and if no good reason is shown for his discharge, must commit him, that he be forthcoming to abide the order and sentence of the court in which he was tried.

Title Third.

OF THE PROCEEDINGS IN CRIMINAL CASES.

Chapter 1. Criminal courts, and their jurisdiction.
" 2. Local jurisdiction of offenses.
" 3. Limitation of prosecutions.
" 4. Proceedings to keep the peace.
" 5. Preliminary proceedings; and herein of the complaint, warrant of arrest, arrest, examination, commitment, and discharge of the defendant.
" 6. Proceedings before justices of the peace.
" 7. Proceedings in the county court.
" 8. Proceedings in the circuit and city courts.
" 9. Witnesses, and evidence.
" 10. Bail.
" 11. Habeas corpus.
" 12. Appeals, and writs of error.
" 13. Reprieves, commutations, and pardons.
" 14. Fees and allowances.

CHAPTER I.

CRIMINAL COURTS, AND THEIR JURISDICTION.

Section 380. Criminal courts specified.
" 381. Circuit courts, jurisdiction of.
" 382. City courts, jurisdiction of.
" 383. County courts, jurisdiction of.
" 384. Justices of the peace, jurisdiction of.
" 385. Prosecution of misdemeanor in circuit court, when abated on plea.
" 386. Requisites of such plea in abatement.
" 387. Probate judge, *ex officio* judge of county court; official oath.
" 388. Official bond of county court judge.
" 389. Clerk of county court.
" 390. Terms attended by sheriff, &c.
" 391. County prosecuting attorney.

§ 380. *Criminal courts specified.*—The criminal jurisdiction of this State is vested in the circuit courts, city courts, county courts, (to be established as hereinafter provided,) justices of the peace, and such other officers as are by law clothed with criminal jurisdiction.

§ 381. *Circuit courts, jurisdiction of.*—The circuit courts

have original jurisdiction of all crimes and misdemeanors committed in the several counties in which they may be held, under the regulations prescribed by law; and they have appellate jurisdiction of all criminal cases tried before the county courts, or before justices of the peace, under the rules hereinafter prescribed,

§ 382. *City courts, jurisdiction of.*—The city court of Mobile, the city court of Montgomery, the city court of Selma, and the city court of Eufaula, have, in the counties in which they are respectively established, the same criminal jurisdiction, both original and appellate, that the circuit courts have in other counties.

§ 383. *County courts, jurisdiction of.*—The county courts, to be established as hereinafter provided, have original jurisdiction, concurrent with the circuit and city courts, of all misdemeanors committed in their respective counties.

§ 384. *Justices of the peace, jurisdiction of.*—Justices of the peace have, in their respective counties, concurrently with the county courts, jurisdiction of the following offenses: violations of the sabbath, vagrancy, assaults, assaults and batteries, and affrays, in which no stick or other weapon is used; and, when the value of the commodity which is the subject of the crime, does not exceed ten dollars, of larceny, whether at common law or by statute, obtaining money by false pretenses or token with intent to defraud another, embezzlement, and receiving stolen or embezzled goods knowing them to be stolen or embezzled.

§ 385. *Prosecution of misdemeanor in circuit court, when abated on plea.*—The original jurisdiction of the circuit and city courts, over felonies and misdemeanors, is in all things unchanged, except that when a prosecution for a misdemeanor has been first commenced, and is still pending in the county court, the prosecution in the circuit or city court shall be abated on plea.

§ 386. *Requisites of such plea in abatement.*—The plea provided for in the last preceding section must state, that the prosecution in the county court was commenced without the agency, request, participation, connivance, or authority of the defendant, and must be sworn to. Each and every averment of the plea may be traversed and denied; and if, on the trial of the issue, it appears that such prosecution was commenced by the agency, request, participa-

tion, connivance, or authority of the defendant, then the jury must be instructed, if they find either of these facts to exist, to find the issue in favor of the State, and the case must proceed to trial in the circuit or city court, as the case may be.

§ 387. *Probate judge ex officio judge of county court; official oath.*—The judges of probate shall be, *ex officio*, the judges of the county courts of their respective counties; and each of said judges shall, before he enters on the discharge of the duties of his office, take and subscribe the oaths prescribed by law for other judicial officers, and further swear, that he will faithfully report to the court of county commissioners a just and true statement of the services performed by him for which he is entitled to fees; which oaths must be filed in the office of the clerk of the circuit court.

§ 388. *Official bond of county court judge.*—The judges of the several county courts shall each enter into bond, payable to the State of Alabama, with two or more good and sufficient sureties, to be approved by the judge of the circuit court, in the penalty of five thousand dollars, conditioned that he will faithfully perform the duties of his office, and will pay into the county treasury, punctually, all moneys, fines, and forfeitures, that come into his hands by virtue of his said office.

§ 389. *Clerk of county court.*—The judges of the county courts are the clerks of their respective courts, but may, at their own expense, employ a clerk, who may do all acts not judicial in their character.

§ 390. *Terms attended by sheriff, &c.*—The terms of the county court shall be attended by the sheriff, or deputy sheriff; and in their absence, some suitable person shall be appointed by the court, to act in their stead, whose compensation shall be two dollars a day, to be paid out of the county treasury.

§ 391. *County prosecuting attorney.*—A prosecuting attorney for the county shall be appointed by the court of county commissioners, who shall hold his office for the term of one year, and until his successor is appointed; and it shall be the duty of such attorney to conduct all prosecutions before the county court.

CHAPTER II.

LOCAL JURISDICTION OF OFFENSES.

Section 392. All offenders punishable.
" 393. Offense prosecuted, generally, in county where committed.
" 394. Offense commenced elsewhere, but consummated here.
" 395. Offense commenced here, but consummated elsewhere.
" 396. Offense committed partly in different counties.
" 397. Offense committed on or near county boundary.
" 398. Forcible marriages, decoying child, kidnapping, &c.
" 399. Bringing stolen property into State.
" 400. Carrying stolen property into another county.

§ 392. *All offenders punishable.*—Every person, whether an inhabitant of this State, or of any other State or country, is liable to punishment by the laws of this State, for an offense committed therein, except when it is by law exclusively cognizable in the United States courts.

§ 393. *Offense prosecuted, generally, in county where committed.*—The local jurisdiction of all public offenses, unless it is otherwise provided by law, is in the county in which the offense was committed,

§ 394. *Offense commenced elsewhere, but consummated here.* When the commission of an offense, commenced elsewhere, is consummated within the boundaries of this State, the offender is liable to punishment here, although he was out of the State at the commission of the offense charged, if he consummated it in this State through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and the jurisdiction in such case, unless otherwise provided by law, is in the county in which the offense was consummated.

§ 395. *Offense commenced here, but consummated elsewhere.* When the commission of an offense, commenced here, is consummated without the boundaries of this State, the offender is liable to punishment therefor; and the jurisdiction in such case, unless otherwise provided by law, is in the county in which the offense was commenced.

§ 396. *Offense committed partly in different counties.*—When an offense is committed partly in one county, and partly in another; or where the acts, or the effects thereof, constituting the offense, or requisite to its consummation,

occur in two or more counties, the jurisdiction is in either county.

§ 397. *Offense committed on or near county boundary.*—When an offense is committed on the boundary of two or more counties, or within a quarter of a mile thereof, the jurisdiction is in either county.

§ 398. *Forcible marriages, decoying child, kidnapping, &c.* For the offenses specified in sections 124, 125, 145, and 146 of this code, the jurisdiction is in the county in which the offense was committed, or in any other county into or through which, in the commission of the offense, the person upon whom it was committed may have been carried.

§ 399. *Bringing stolen property into State.*—Where property is stolen elsewhere, and brought into this State, the jurisdiction is in any county into which the property is brought.

§ 400. *Carrying stolen property into another county.*—Where property is stolen in one county, and carried into another, the jurisdiction is in either county.

CHAPTER III.

LIMITATION OF PROSECUTIONS.

Section 401. Capital felonies; murder, manslaughter, arson, forgery, grand larceny, &c.
" 402. Perjury, and subornation of perjury.
" 403. Other felonies.
" 404. Misdemeanors.
" 405. Prosecutions before justice of the peace.
" 406. Commencement of prosecution.

§ 401. *Capital felonies; murder, manslaughter, arson, forgery, grand larceny, &c.*—There is no limitation of time, within which a prosecution must be commenced for any public offense which may be punished capitally, or for murder in the second degree, manslaughter in the first degree, arson, grand larceny, forgery, counterfeiting, or any offense expressly punishable, under the provisions of this code, as forgery or counterfeiting.

§ 402. *Perjury, and subornation of perjury.*—A prosecution for perjury, or subornation of perjury, must be com-

menced within five years next after the commission of the offense.

§ 403. *Other felonies.*—The prosecution of all felonies, except those specified in the last two preceding sections, must be commenced within three years next after the commission of the offense.

§ 404. *Misdemeanors.*—The prosecution of all misdemeanors before the circuit, city, or county court, must be commenced within twelve months next after the commission of the offense.

§ 405. *Prosecutions before justice of the peace.*—Prosecutions before a justice of the peace, for offenses within his jurisdiction, must be commenced within sixty days next after the commission of the offense.

§ 406. *Commencement of prosecution.*—A prosecution may be commenced, within the meaning of this chapter, by the issue of a warrant, or by binding over the offender.

CHAPTER IV.

PROCEEDINGS TO KEEP THE PEACE.

Section 407. Sheriff chief conservator of peace.
" 408. Who are magistrates.
" 409. Complaint, on oath, subscribed by party, &c.
" 410. Warrant of arrest to issue.
" 411. Executed by whom.
" 412. Hearing; discharge of defendant.
" 413. Costs on plaintiff, if complaint unfounded.
" 414. Defendant required to give sureties, when.
" 415. Form of undertaking to keep the peace.
" 416. Commitment on failure to give undertaking.
" 417. Discharge by sheriff on giving undertaking.
" 418. Costs on defendant, and execution.
" 419. Appeal to circuit or city court.
" 420. Form of undertaking on appeal.
" 421. Undertaking returned to court.
" 422. Trial in court *de novo*.
" 423. Costs against parties to appeal bond.
" 424. Proceeding by magistrate without complaint.
" 425. Proceeding by court on conviction.
" 426. Forfeiture of undertaking.
" 427. Remission of penalty.

§ 407. *Sheriff chief conservator of peace.*—The sheriff is the principal conservator of the peace in his county, and it

is his duty to suppress all riots, unlawful assemblies, and affrays; in the execution of which duty, he may summon to his aid as many of the male inhabitants of his county as he thinks proper, and any military company or companies.

§ 408. *Who are magistrates.*—The judges of the supreme and circuit court, and the chancellors, throughout the State; the judges of the city courts, the judges of probate, the judges of the county courts, and justices of the peace, in their respective counties; and the mayor or chief officer of any incorporated town or city, within the limits of their respective corporations, are magistrates within the meaning of this chapter, and authorized to require persons to give security to keep the peace in the manner herein provided.

§ 409. *Complaint, on oath, subscribed by party, &c.*—Whenever complaint is made to a magistrate, that any person has threatened, or is about to commit an offense on the person or property of another, he must examine the complainant, and any witness he may produce, on oath, reduce such examination to writing, and cause it to be subscribed by the party so examined.

§ 410. *Warrant of arrest to issue.*—If, on such examination, it appears that there is reason to fear the commission of any such offense by the person complained of, the magistrate must issue a warrant, directed to any lawful officer of the State, containing the substance of the complaint, and commanding such officer forthwith to arrest the person complained of, and bring him before him, or some other magistrate, having jurisdiction of the matter.

§ 411. *Executed by whom.*—Such warrant may be executed by the sheriff, or other officer acting as sheriff, or his deputy, or by any constable of the county, or by any marshal or policeman of any incorporated city or town in the county.

§ 412. *Hearing; discharge of defendant.*—When the person complained of is brought before the magistrate, he and his witnesses must be heard in his defense; and if, on hearing of the witnesses on both sides, it appears that there is no just reason to fear the commission of the offense, the defendant must be discharged.

§ 413. *Costs on plaintiff, if complaint unfounded.*—If the magistrate regard the complaint as unfounded, or friv-

odous, he may order the complainant to pay the costs of prosecution; and upon making such order, an execution may issue to coerce the payment thereof.

§ 414. *Defendant required to give sureties, when.*—If, however, there is just reason to fear the commission of such offense, the defendant must be required to give security to keep the peace, in such sum as the magistrate may direct, towards all the people of this State, and particularly towards the person against whom, or whose property, there is reason to fear the offense may be committed, for such time as the magistrate may direct, not more than twelve, nor less than six months; but the defendant must not be required to appear at the next term of the circuit or city court, unless he has actually committed an offense cognizable in such court.

§ 415. *Form of undertaking to keep the peace.*—The undertaking to keep the peace may be in substance as follows: "The State of Alabama, }
County. } We [here insert the names of the defendant and his sureties] agree to pay the State of Alabama one thousand dollars," [or such sum as the magistrate directs,] "if the said" [here insert the name of the defendant] does not keep the peace for twelve months," [or as the case may be,] "from this undertaking, towards all the citizens of this State, and particularly towards" [here insert the name of the person against whom, or whose property, there is reason to fear the commission of the offense.] "Dated —— day of ——, 186—."

Signed, A. B.
C. D.
E. F.

"Approved.
G. H., justice of the peace, [or as the case may be.]

§ 416. *Commitment on failure to give undertaking.*—Upon such undertaking, with sufficient sureties, being given, the defendant must be discharged; and if not given, the magistrate must commit him to jail until he gives the same; specifying in the warrant of commitment the cause thereof, the time he is required to keep the peace, and towards whom particularly, as also the sum in which security is required.

§ 417. *Discharge by sheriff on giving undertaking.*—Any person committed under the provisions of the preceding

section, may be discharged by the sheriff of the county in which he is detained, upon entering into an undertaking to keep the peace, with sufficient sureties, in the sum, and for the term required by the magistrate.

§ 418. *Costs on defendant, and execution.*—In all cases where a person is required to keep the peace, the magistrate may order the costs of the prosecution, or any part thereof, to be paid by such person; and an execution may issue for the collection of the same.

§ 419. *Appeal to circuit or city court.*—Any person required to keep the peace under the provisions of the preceding sections of this chapter, by any other magistrate than a judge of the supreme or circuit court, or chancellor, on entering into an undertaking, with sufficient sureties, in a sum equal to that required of him to keep the peace, for the prosecution of his appeal, and in the meantime to keep the peace, is entitled to an appeal to the next circuit or city court of the county; and the magistrate from whose order the appeal is taken may, in such case, require such witnesses as he thinks necessary to enter into an undertaking, in the sum of one hundred dollars each, to appear at such court.

§ 420. *Form of undertaking on appeal.*—The undertaking on the appeal, under the provisions of the preceding section, may be in substance as follows:

"The State of Alabama, }
County. } An order having been made by A. B., a justice of the peace for said county," [or other magistrate, as the case may be,] "requiring" [here insert the name of the defendant] "to keep the peace towards all the people of this State, and particularly towards" [here insert the name of the person against whom, or whose property, there is reason to fear the offense may be committed,] "from which order the said defendant has taken an appeal to the next circuit court of said county; now, therefore, we," [here insert the names of the defendant and his sureties,] "agree to pay the State of Alabama" [here insert the amount required by the magistrate] "—dollars, if the said defendant fail to prosecute his appeal to effect, and in the meantime to keep the peace towards" [here insert the name of the person against whom, or whose prop-

erty, there is reason to fear the offense may be committed.]

"Dated this —— day of ——, 186—.

Signed, A. B.
C. D.
E. F.

"Approved,

L. M., justice of the peace," [or other magistrate as the case may be.]

§ 421. *Undertaking returned to court.*—Any undertaking given under any provisions of this chapter, must be returned by the magistrate taking the same, to the clerk of the circuit or city court of the proper county, by the first day of the next court; and failing so to do, he may be attached for contempt.

§ 422. *Trial in court de novo.*—The court to which an appeal, under the provisions of this chapter, is prosecuted, must examine the case anew, and may confirm the order of the magistrate, or discharge the appellant; or require him to enter into a new undertaking, with sufficient sureties, to keep the peace, in such sum, and for such term as the court thinks proper; and may make such order in relation to the costs of the prosecution as seems just, which order may be enforced by execution.

§ 423. *Costs against parties to appeal bond.*—If the appellant fails to sustain his appeal, his undertaking remains in full force and effect, as to any breach thereof, and also stands as security for any costs which are ordered by the court to be paid by the appellant; and execution may issue therefor, against all parties to the same.

§ 424. *Proceeding by magistrate without complaint.*—A person who, in the presence of a court, or magistrate, commits, or threatens to commit, an offense against the person or property of another, or contends with another with angry words, may be ordered, without process, to enter into an undertaking to keep the peace, for a term not exceeding twelve months; and, in case of refusal, be committed as in other cases.

§ 425. *Proceeding by court on conviction.*—The circuit courts, the city courts, and the county courts, may also, on the conviction of any person for an offense against the person or property of another, when necessary for the public good, require the defendant to enter into an undertaking,

with sureties, to keep the peace, for not exceeding twelve months; and, on his failure, may commit him.

§ 426. *Forfeiture of undertaking.*—An undertaking to keep the peace is forfeited by the commission by the defendant of any offense upon the person or property of another; which may be ascertained by a jury, without the conviction of the defendant therefor, in the circuit or city court, on ten days' notice to the parties against whom the forfeiture is sought.

§ 427. *Remission of penalty.*—The court, on a forfeiture of an undertaking to keep the peace, may remit any portion of the amount specified therein, according to the circumstances of the case.

CHAPTER V.

PRELIMINARY PROCEEDINGS; AND HEREIN OF THE COMPLAINT, WARRANT OF ARREST, ARREST, EXAMINATION, COMMITMENT, AND DISCHARGE OF THE DEFENDANT.

Article 1. Complaint, and warrant of arrest.
" 2. Execution of warrant; and herein of arrests generally.
" 3. Examination, commitment, and discharge of defendant.

ARTICLE I.

Complaint, and warrant of arrest.

Section 428. Definition of complaint.
" 429. Plaintiff examined on oath; depositions reduced to writing, and subscribed.
" 430. What depositions must state.
" 431. Warrant of arrest to issue, if probable cause shown.
" 432. Form of warrant.
" 433. Contents of warrant, and to whom directed.

§ 428. *Definition of complaint.*—The complaint is an allegation, made before a proper magistrate, that a person has been guilty of a designated public offense.

§ 429. *Plaintiff examined on oath; depositions reduced to writing, and subscribed.*—Upon complaint being made to

any one of the magistrates specified in section 408, that such offense has, in the opinion of the complainant, been committed, the magistrate must examine the complainant, and such witnesses as he may propose, on oath, take their depositions in writing, and cause them to be subscribed by the persons making them.

§ 430. *What depositions must state.*—The depositions must set forth the facts stated by the complainant and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

§ 431. *Warrant of arrest to issue, if probable cause shown.* If the magistrate is reasonably satisfied, from such depositions, that the offense complained of has been committed, and there is reasonable ground to believe that the defendant is guilty thereof, he must issue a warrant of arrest.

§ 432. *Form of warrant.*—A warrant of arrest is an order in writing, issued and signed by a magistrate, stating the substance of the complaint, directed to a proper officer, and commanding him to arrest the defendant; and may be in substance as follows:

"The State of Alabama, }
County. } To any lawful officer of the State: Complaint on oath having been made before me, that the offense of" [designating, or describing it] "has been committed, and accusing C. D. thereof: you are therefore commanded, forthwith to arrest C. D., and bring him before me. Dated the —— day of ——, 186—."

(Signed) "E. F.,
justice of the peace,"
[or other magistrate, as the case may be.]

§ 433. *Contents of warrant, and to whom directed.*—Such warrant must designate the name of the defendant, if known; but, if it state that the name is unknown to the magistrate, then no name need be inserted. It must also state the offense, either by name, or so that it can be clearly inferred; the county in which it was issued, must appear from some part of the warrant; and the warrant must be signed by the magistrate, with his name and initials of office, or the same must in some way appear from the warrant. It must be directed "to any lawful officer of the State;" but, if executed by any lawful officer, having authority to execute it, it is valid, without regard to its direction.

ARTICLE II.

Execution of warrant; and herein of arrests generally.

Section 434. What officers may make arrests.
" 435. Arrest under warrant; when and how made.
" 436. Warrant executed where.
" 437. Authority of officer to pursue and arrest in another county.
" 438. Endorsement on warrant by magistrate.
" 439. Magistrate not liable on endorsement.
" 440. When officer arresting may discharge on bail.
" 441. Discharge on bail by magistrate.
" 442. Amount of bail.
" 443. Bail-piece and warrant returned to court.
" 444. When defendant must be carried before magistrate issuing warrant.
" 445. When officer may arrest without warrant.
" 446. Duty and authority of officer in such case.
" 447. Private person must assist officer.
" 448. Arrest on order of magistrate without warrant.
" 449. When private person may arrest.
" 450. His duty and authority in such case.
" 451. Arrest for felony, when made.
" 452. Person arrested to be taken before magistrate.
" 453. Re-arrest after escape or rescue.

§ 434. *What officers may make arrests.*—An arrest may be made, under a warrant, or without a warrant, by any sheriff, or other officer acting as sheriff, or his deputy, or by any constable, acting within their respective counties, or by any marshal, deputy marshal, or policeman of any incorporated city or town within the limits of county.

§ 435. *Arrest under warrant; when and how made.*—An officer may execute a warrant of arrest on any day, and at any time; he must, in doing so, inform the defendant of his authority, and, if required, must show the warrant; and if he is refused admittance, after notice of his authority and purpose, he may break an outer or inner door or window of a dwelling-house, in order to make the arrest.

§ 436. *Warrant executed where.*—A warrant of arrest, when issued by a judge of the supreme or circuit court, or by a chancellor, may be executed in any county in the State; but, if issued by any other magistrate, it must be executed in the county in which it was issued, unless the defendant is in another county; and when the defendant is in another county, it may be executed therein, on a written endorsement on the warrant by a magistrate of that county,

signed by him, to the following effect: "This warrant may be executed in —— county."

§ 437. *Authority of officer to pursue and arrest in another county.*—Any lawful officer, having a warrant of arrest to execute, may pursue the defendant into another county; and, on obtaining an endorsement on the warrant by a magistrate of that county, signed by such magistrate, to the following effect: "A. B. is authorized to execute this warrant in —— county,"—may summon persons to assist him in making the arrest, and exercise the same authority as in his own county.

§ 438. *Endorsement on warrant by magistrate.*—The endorsement of the magistrate, according to the provisions of the last two sections, must not be made, unless he is satisfied, from his own knowledge, or from the oral or written statement, on oath, of some credible persons, proving the hand-writing of the magistrate issuing the warrant, in the one case; and in the other, that the person in pursuit is an officer authorized to make the arrest in the county in which the warrant issued.

§ 439. *Magistrate not liable on endorsement.*—No magistrate, having complied with the provisions of the last section, is liable to any indictment or action for making such endorsement, although it may afterwards appear that such warrant was illegally issued, or that the person was not authorized to execute the same.

§ 440. *When officer arresting may discharge on bail.*—When the offense described in the warrant is a misdemeanor, and it is executed by the sheriff or his deputy, such sheriff or deputy may, on the request of the defendant, discharge him, on sufficient bail for his appearance at the next term of the court having jurisdiction of the offense, to answer any indictment which may be found against him therefor; and if such court is in session, for his appearance at such court.

§ 441. *Discharge on bail by magistrate.*—When the offense described in the warrant is a misdemeanor, and it is not executed by the sheriff or his deputy, at the defendant's request, he may be brought before a magistrate of the county in which the warrant was executed; and such magistrate may, without examination, discharge such defendant,

upon sufficient bail for his appearance before the court having cognizance of the offense.

§ 442. *Amount of bail.*—When bail is taken under the provisions of the last two sections, the officer or magistrate, in fixing the amount of bail, must act on the presumption that the offense is of an aggravated nature.

§ 443. *Bail-piece and warrant returned to court.*—The magistrate admitting the defendant to bail, under the provisions of section 441, must certify the same upon the warrant, and deliver such warrant, with the undertaking, to the officer who executed the warrant; who must cause the same to be delivered, without unnecessary delay, to the clerk of the court in which the defendant is bound by his undertaking to appear.

§ 444. *When defendant must be carried before magistrate issuing warrant.*—When the warrant of arrest is executed in any other county than the one in which it is issued, and is for felony; or when for a misdemeanor, and the defendant is not bailed according to the provisions of sections 440 and 441, he must be brought before the magistrate issuing the warrant; or, if such magistrate is unable to attend, or his office vacant, before some other magistrate of the county in which such warrant issued; and the warrant, with a proper return thereon, much be delivered to such magistrate.

§ 445. *When officer may arrest without warrant.*—An officer may also arrest any person, without warrant, on any day, and at any time, for any public offense committed, or a breach of the peace threatened, in his presence; or where a felony has been committed, though not in his presence, by the person arrested; or where a felony has been committed, and he has reasonable cause to believe that the person arrested committed it; or where he has reasonable cause to believe that the person arrested has committed a felony, although it may afterwards appear that a felony had not in fact been committed; or on a charge made, upon reasonable cause, that the person arrested has committed a felony.

§ 446. *Duty and authority of officer in such case.*—When arresting a person without a warrant, the officer must inform him of his authority and the cause of arrest, except when he is arrested in the actual commission of a public offense, or on pursuit; and has authority to break open

an outer or inner door or window of a dwelling-house, if, after notice of his office and purpose, he is refused admittance.

§ 447. *Private person must assist officer.*—It is the duty of every person, when required to do so by an officer, to assist him in making an arrest.

§ 448. *Arrest on order of magistrate without warrant.*—When a public offense is committed, in the presence of a magistrate, he may, by verbal or written order, command any person to arrest the offender; and when arrested, may thereupon proceed as if such offender had been brought before him on a warrant of arrest.

§ 449. *When private person may arrest.*—A private person may arrest another, for any public offense committed in his presence; or where a felony has been committed, though not in his presence, by the person arrested; or where a felony has been committed, and he has reasonable cause to believe that the person arrested committed it.

§ 450. *His duty and authority in such case.*—He must, at the time of the arrest, inform the person to be arrested of the cause thereof, except when such person is in the actual commission of an offense, or arrested on pursuit; and if he is refused admittance, after notice of his intention, and the person to be arrested has committed a felony, he may break open an outer or inner door or window of a dwelling-house.

§ 451. *Arrest for felony, when made.*—An arrest for felony may be made by a private person on any day, and at any time.

§ 452. *Person arrested to be taken before magistrate.*—It is the duty of any private person, having arrested another for the commission of any public offense, to take him without unnecessary delay before a magistrate, or to deliver him to some one of the officers specified in section 434, who must forthwith take him before a magistrate.

§ 453. *Re-arrest after escape or rescue.*—If a person arrested escapes, or is rescued, he may be immediately pursued by the officer or person in whose custody he was, and retaken at any time, and in any place in the State; and if such officer or person is refused admittance, after notice of his intention, he may break open an outer or inner door or

window of a dwelling-house, in order to retake the person so escaping or rescued.

ARTICLE III.

Examination, discharge, and commitment of defendant.

Section 454. Adjournment of examination.
" 455. On default of appearance at adjourned day, undertaking of bail returned to court.
" 456. On failure of magistrate to attend, another may act in his stead.
" 457. Alias warrant of arrest.
" 458. Examination; how conducted.
" 459. Defendant may appear by counsel; witnesses put under rule.
" 460. Testimony of witnesses reduced to writing, and subscribed.
" 461. Probable cause not shown, defendant discharged.
" 462. If probable cause shown, discharged on bail, or committed.
" 463. Form of commitment.
" 464. Defendant, if committed, may elect to perform hard labor for county.
" 465. Bail taken by sheriff, on commitment for bailable offense.
" 466. Witnesses bound over to court.
" 467. Form of undertaking by State witnesses.
" 468. Same, for defendant's witnesses.
" 469. When surety for appearance required of witness.
" 470. When of minors and married women.
" 471. Commitment of witness, on default of undertaking, &c.
" 472. Discharge by sheriff, &c.
" 473 Examinations and undertakings returned to court.
" 474. Magistrate may associate others with him.

§ 454. *Adjournment of examination.*—When a defendant is brought before a magistrate, under a warrant of arrest, for examination, such magistrate may adjourn the examination from time to time, as may be necessary, not exceeding ten days at one time, without the consent of the defendant, and to the same, or a different place in the county; and in such case, if the defendant is charged with a capital offense, he must be committed to jail in the meantime; but if the offense is not capital, he may give bail, in such sum as the magistrate directs, for his appearance for such further examination, and for the want thereof must be committed; and on the day to which the examination was adjourned, he may be brought before the magistrate, by his verbal order

to the same officer who had charge of him, or by order in writing to a different person, if the custody has been changed.

§ 455. *On default of appearance at adjourned day, undertaking of bail returned to court.*—If the defendant does not appear before the magistrate at the time to which the examination is adjourned, he must certify the default on the undertaking of bail, and return the same to the next circuit or city court of his county; and the like proceedings must be had thereon as upon the breach of an undertaking in that court, the certificate of the magistrate being presumptive evidence of the default of the defendant.

§ 456. *On failure of magistrate to attend, another may act in his stead.*—If the magistrate adjourning the examination fails to attend on the day to which such examination is adjourned, any other magistrate of the county may attend in his place, and proceed with the examination; or, if the defendant fails to appear, enter his default, and certify the same, with the undertaking of bail, to the next circuit or city court of the county, according to the provisions of the preceding section; and the like proceedings may be had thereon, as if certified by the magistrate taking the same.

§ 457. *Alias warrant of arrest.*—On the failure of the defendant to appear, the magistrate certifying the default, or any other magistrate, may issue another warrant of arrest, upon which the same proceedings may be had against the defendant as on the original warrant.

§ 458. *Examination; how conducted.*—The magistrate before whom any person is brought, charged with a public offense, must, as soon as may be, examine the complainant, and the witnesses for the prosecution, on oath, in the presence of the defendant; and after the testimony for the prosecution is heard, the witnesses for the defendant must be sworn and examined.

§ 459. *Defendant may appear by counsel; witnesses put under rule.*—The defendant may appear by counsel, and the magistrate may, on application, direct the witnesses for the prosecution or defense, or both, to be kept separate, so that they cannot hear the evidence, or converse with each other until examined.

§ 460. *Testimony of witnesses reduced to writing, and*

subscribed.—The evidence of the witnesses examined, must be reduced to writing by the magistrate, or under his direction, and signed by the witnesses respectively. Such examination is under the control of the magistrate, and should be so conducted as to elicit the facts of the case.

§ 461. *Probable cause not shown, defendant discharged.*—Upon the whole evidence, if it appear to the magistrate that no offense has been committed, or that there is no probable cause for charging the defendant therewith, he must be discharged.

§ 462. *If probable cause shown, discharged on bail, or committed.*—If it appear that an offense has been committed, and there is probable cause to believe that the defendant is guilty thereof, he must be discharged, if the offense is bailable, upon giving sufficient bail; but, if sufficient bail is not given, or if the offense is not bailable, he must be committed to jail by an order in writing.

§ 463. *Form of commitment.*—The commitment may be in substance as follows:

"The State of Alabama, }
County. } To the jailor of —— county:

"On the examination of A. B., charged with the offense of murder," [or other offense, as the case may be, describing it by name, or so that it may be clearly inferred,] "it appearing that such offense has been committed, and that there is sufficient cause to believe that A. B. is guilty thereof; you are therefore commanded to receive him into your custody, and detain him until he is legally discharged. Dated this —— day of ——, 186—.

"C. D., justice of the peace," [or other officer, as the case may be.]

§ 464. *Defendant, if committed, may elect to perform hard labor for county.*—If the defendant is charged with a misdemeanor, and is ordered to be committed to the county jail, he may elect to perform hard labor for the county; and if he so elect, it shall be the duty of the magistrate to make an order allowing him to do so, and to certify that fact to the court at which he is required to appear; and if he is convicted when tried, it shall be the duty of the court, in determining his punishment, to take into consideration the amount of labor performed by him.

§ 465. *Bail taken by sheriff, on commitment for bailable*

offense.—Whenever a person is committed to jail, for a bailable offense, under the provisions of this chapter, the magistrate must endorse on the commitment the amount of bail required, and sign his name thereto; and the sheriff of the county to which he is committed may discharge him, on giving sufficient bail in the amount so endorsed; and must, in such case, return the undertaking to the court to which such person is bound to appear, within five days thereafter.

§ 466. *Witnesses bound over to court.*—The magistrate must also require the witnesses for the prosecution to enter into an undertaking, in the sum of one hundred dollars each, to appear and testify at the court having cognizance of the offense; and if requested by the defendant, may require his witnesses to enter into such undertaking.

§ 467. *Form of undertaking by State witnesses.*—The undertaking of the witnesses for the prosecution may be in substance as follows:

"The State of Alabama, }
County. } We, A. B., C. D., and E. F., witnesses against G. H., charged with a public offense, do each agree to appear at the next circuit [or city] court of ——— county, to give evidence against him; and failing so to do, to pay to the State of Alabama one hundred dollars. Dated this —— day of —— 186 —."

(Signed,) "A. B.
C. D.
E. F.

"Taken by L. M., justice of the peace," [or as the case may be.]

§ 468. *Same, for defendant's witnesses.*—The undertaking of the defendant's witnesses is in similar form, but payable to the defendant, instead of the State of Alabama.

§ 469. *When surety for appearance required of witness.*—Whenever the magistrate has good reason to believe that a witness for the prosecution will not appear to testify, he may order such witness to enter into an undertaking to appear and testify, in a larger sum, and with sufficient sureties; but such surety must not be required from any witness who does not reside in the State, and within fifty miles of the place where the examination takes place.

§ 470. *When of minors and married women.*—Married

women and minors, when material witnesses for the prosecution, may also be required, in the discretion of the magistrate, to procure sureties who will undertake for their appearance to testify.

§ 471. *Commitment of witness, on default of undertaking, &c.*—Any witness required to enter into an undertaking, with or without surety, must, on failure or refusal, be committed to jail.

§ 472. *Discharge by sheriff.*—In such case, the magistrate must state, in the commitment, the amount of the undertaking, and whether surety is required; and the witness must be discharged by the sheriff, on entering into the undertaking as required.

§ 473. *Examinations and undertakings returned to court.* All examinations and undertakings, by parties or witnesses, taken under this chapter, must be returned by the magistrate to the court at which the defendant or witness is bound to appear, by the first day thereof; and any magistrate failing so to do, may be compelled by rule of court, and in case of disobedience, by attachment for contempt.

§ 474. *Magistrate may associate others with him.*—Any magistrate to whom complaint is made, or before whom any defendant is brought, charged with a public offense, may associate with himself one or more magistrates of equal grade; and the powers and duties in this chapter prescribed may be executed and performed by them.

CHAPTER VI.

PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Section 475. Copy of accusation delivered, on demand.
" 476. If trial by jury demanded, bound over to court.
" 477. If parties and witnesses present, trial to proceed unless continued.
" 478. Justice to decide law and facts without jury.
" 479. Forms &c., same as in county court.
" 480. Appeal to circuit or city court; appeal bond.
" 481. Appeal tried *de novo*.

§ 475. *Copy of accusation delivered, on demand.*—When a person is arrested, and brought before a justice of the peace, charged with a public offense of which such justice

has jurisdiction under the provisions of this code, he must be furnished, if he demand it, with a copy of the accusation, as contained in the warrant of arrest.

§ 476. *If trial by jury demanded, bound over to court.*—If he demand a trial by jury, he must be required to enter into bond, with good sureties, conditioned for his appearance at the next term of the circuit or city court of the county to answer the charge; and failing to give such bond, must be committed to the county jail until the next term of the circuit or city court, having jurisdiction of the offense, unless he elect in the meantime to perform hard labor for the county, as provided in section 464.

§ 477. *If parties and witnesses present, trial to proceed unless continued.*—If the accused and the prosecutor are both present, and also the witnesses for the prosecution and defense, and the accused does not demand a trial by jury, the trial must proceed before the justice, unless for good cause shown he continue it to some other day, not more than ten days distant.

§ 478. *Justice to decide law and facts without jury.*—In all trials before a justice of the peace, of causes which are within his jurisdiction, he must determine both the law and the facts, without the intervention of a jury, and award the punishment which the offense may demand.

§ 479. *Forms &c., same as in county court.*—The forms set forth in the seventh chapter of this title, for proceedings before the county court, or others substantially the same, may be used by a justice of the peace in cases tried before him.

§ 480. *Appeal to circuit or city court; appeal bond.*—In all cases tried before a justice of the peace, the defendant, if convicted, shall have a right of appeal to the next ensuing term of the circuit or city court of the county, on entering into bond, with good sureties, in such sum as said justice may prescribe, conditioned that he will appear at the court to which the appeal is taken, until discharged by due course of law, and will pay, satisfy, abide by and perform whatever judgment and sentence may be there rendered against him.

§ 481. *Appeal tried* de novo.—The trial in the circuit or city court, on appeal from a judgment rendered by a justice, shall be *de novo*, and shall be governed in all respects by

the rules and regulations prescribed for the trial of appeals from the county court.

CHAPTER VII.

PROCEEDINGS IN THE COUNTY COURT.

Section 482. Monthly terms held; notice published.
" 483. Warrant of arrest issued by judge, or justice of the peace; form of affidavit for warrant.
" 484 Form of warrant.
" 485. By whom executed.
" 486. Speedy trial; continuance.
" 487. Bail; form of undertaking.
" 488. Bail taken by arresting officer.
" 489. Subpœnas; by whom issued and executed.
" 490. Form of subpœna.
" 491. Judgment *nisi* on default of appearance.
" 492. *Scire facias* thereon.
" 493. Judgment final on default.
" 494. Remission of forfeiture.
" 495. Judgment against defaulting witness.
" 496. Alias warrant of arrest or subpœna.
" 497. Copy of accusation delivered to defendant on demand.
" 498. On demand of trial by jury, bound over to circuit court, or allowed to labor for county.
" 499. Judge to decide law and fact, without jury.
" 500. Form of judgment of conviction.
" 501. Judgment discharging defendant.
" 502. Judgment for costs against prosecutor.
" 503. Jeofails and amendments.
" 504. Appeal to circuit or city court; appeal bond.
" 505. Transcript &c., returned to court.
" 506. Subpœnas for witnesses.
" 507. Forfeiture of appeal bond; alias warrant of arrest to issue.
" 508. Arrest on warrant as on *capias*.
" 509. Trial of appeal *de novo*; statement of charge.
" 510. Practice, evidence, &c., same as in other cases.
" 511. On conviction, and sentence to hard labor, additional labor imposed for costs.

§ 482. *Monthly terms held; notice published.*—A county court, for the trial of misdemeanors, shall be held once a month in each county in this State, at the court-house thereof; the day of the week and month on which the court is held to be fixed by the judge, and ten days' notice thereof to be given by him, prior to the first term, in a newspaper published in the county, or some adjoining county, or by posting the same at the door of the court-house and three other public places in the county; but a

failure to give such notice shall not affect the validity of his judgments or sentences.

§ 483. *Warrant of arrest issued by judge, or justice of the peace; form of affidavit for warrant.*—A party aggrieved, or desiring to bring a charge of misdemeanor before the county court, may apply to the judge thereof, or to some justice of the peace of the county, for a warrant of arrest; and upon making affidavit, in writing, that he has probable cause for believing, and does believe, that an offense [designating the misdemeanor by name, or by some other phrase which, in common parlance, designates it] has been committed in said county by C. D., [naming the offender,] on the person [or property, as the case may be,] of A. B., [naming the person injured,] then the judge of said court, or justice of the peace, shall issue his warrant of arrest.

§ 484. *Form of warrant.*—The warrant of arrest may be in the following form:

"The State of Alabama, }
County. } To any constable of said county:

"You are hereby commanded to arrest C. D., and bring him before me, on ———, the —— day of ——— next, to answer the State of Alabama of a charge of [describe the offense as stated in the affidavit] preferred by A. B.

"Witness may hand this —— day of ———, 186—.

D. C.,
county judge."

"Summon E. F. and G. H., witnesses for the State; J. K. and L. M., witnesses for the defendant.

D. C.,
county judge."

§ 485. *By whom executed.*—The sheriff, any constable of the county, or, in case none is convenient, any citizen of the county (except the prosecutor) appointed by the judge of the court for the purpose, may execute the warrant of arrest, and bring the defendant before the court; and may also summon the witnesses, and serve all other process.

§ 486. *Speedy trial; continuance.*—Justice shall be speedily administered in said court. If the accused and prosecutor are present before the court, or, if the accused is present, and the prosecutor has notice, by having sued out the warrant of arrest, or otherwise, then the case stands for trial, and may be disposed of; but for good cause shown

the trial may be adjourned to the next succeeding term.

§ 487. *Bail; form of undertaking.*—If the court is not in session when the defendant is brought before it, or if the case should be continued for trial at a subsequent term, the defendant may be admitted to bail, on his entering into bond, with two good sureties, in such sum as the judge of the court may prescribe; which bond may be in the following, or equivalent words:

"The State of Alabama, }
County. } We, C. D., and O. P. and Q. R., his sureties, acknowledge ourselves indebted to the State of Alabama, in the sum of ——— dollars; to be void if I, C. D., appear at the next term of the county court of said county, and from term to term until discharged, and answer the charge of [describe the offense] preferred against me by A. B. Witness our hands this —— day of ——, 186—.

"Approved. C. D.
D. C., county judge. O. P.
Q. R."

§ 488. *Bail taken by arresting officer.*—In like manner, the judge of the county court may, when he issues his warrant of arrest, endorse on the same the amount for which the defendant may give bail; and in such case, the officer arresting may admit the defendant to bail, on his entering into bond, in substance as given in the last preceding section, with two good sureties, and approved by such officer.

§ 489. *Subpœnas; by whom issued and executed.*—The judge of the county court, or any justice of the peace of the county, may issue subpœnas for witnesses, at the instance of the prosecutor or defendant; and it is the duty of the arresting officer, the sheriff, or any constable to whom they are delivered, to execute and return them to the court.

§ 490. *Form of subpœna.*—Subpœnas for witnesses may be, substantially, in the following form:

"The State of Alabama, }
County. } To any constable of said county:

"Summon E. F., witness for the State," [or J. K., witness for the defendant, as the case may be,] "to appear before the county court of said county, on the —— day of

——, and testify in a case in said court of the State *vs.* C. D., for [here describe the offense,] and to appear from term to term until discharged. Witness my hand, this —— day of ——, 186—.

D. C., county judge,
[or S. T., justice of the peace.]

§ 491. *Judgment* nisi *on default of appearance.*—If the defendant fail to appear, as required by his bond, the county court shall enter up a forfeiture against him and his sureties, which may be in the following form:

"The State, *vs.* C. D., defendant; O. P. and Q. R., his sureties. } In the county court of ——— county, ——— day of ———, 186—.

"In this case, C. D. failing to appear and answer the charge against him for [here describe the offense as in the affidavit,] a judgment is entered against him and his said sureties, for ——— dollars," [the amount of the penalty of the bond,] "in favor of the State, for the use of the county of ———, unless they appear at the next term of this court, and show cause to the contrary: and it is ordered that notice issue to them."

§ 492. Scire facias *thereon.*—The county judge shall thereupon issue a notice to said defendant, and cause it, together with a copy of the conditional judgment rendered, to be served on said defendant, or to be left at his last known place of residence or habitation in said county, three days before the next term of his court; which notice may be in the following form:

"The State of Alabama, } To any constable of said county.
County. }

"Notify C. D., that a conditional judgment was rendered against him and his sureties, O. P. and Q. R., of which the enclosed is a copy. Witness my hand, this —— day of ——, 186—.

C. D., county judge."

§ 493. *Judgment final on default.*—If the defendant, on being thus notified, fails to appear, or appears, but fails to show a satisfactory excuse for his default; and no sufficient cause is shown for a continuance of the cause, the court shall render judgment final; which may be in the following form:

"The State, *vs.* C. D., defendant; O. P. and Q. R., his sureties. } Proceedings for [here describe the offense, as in the affidavit for arrest.]

"In this case, the defendant being notified, and offering no sufficient excuse for his default, the judgment is made final against him and his sureties, in favor of the State of Alabama, for the use of the county of ——."

§ 494. *Remission of forfeiture.*—If the defendant appears, and submits to trial, the court may release him and his sureties from any part of the forfeiture which seems just; in which case, the following should be added to the judgment entry; "but the court releases the defendants from ——— dollars of the said judgment."

§ 495. *Judgment against defaulting witness.*—If witnesses, after being summoned, fail to appear and testify, as commanded, a conditional judgment may be rendered against them; if State witnesses, in favor of the State, for the use of the county; if defendant's witnesses, in favor of such defendant; and in such cases, the proceedings may, in all material respects, be made to conform to those given for forfeitures of bail-bonds. The penalty for non-attendance by a witness in the county court is fifty dollars, and the judgment must be entered for that amount.

§ 496. *Alias warrant of arrest or subpœna.*—When a forfeiture has been taken against a defendant and his sureties on his bail-bond, it shall be the duty of the court to issue another warrant of arrest against the defendant, upon which the same proceedings shall be had as upon the original warrant; and when a forfeiture has been entered against a witness for non-attendance, another subpœna may be issued for him, upon which the same proceedings may be had as upon the original subpœna.

§ 497. *Copy of accusation delivered to defendant on demand.* When brought before the county court for trial, the accused, if he demands it, must be furnished with a copy of the accusation, as contained in the warrant of arrest.

§ 498. *On demand of trial by jury, bound over to circuit court, or allowed to labor for county.*—If he demands a trial by jury, it shall be the duty of the judge to require him to enter into bond, with good sureties, in such sum as said judge may deem sufficient, conditioned for his appearance at the next

term of the circuit or city court of the county to answer the charge, and to return such bond, if given, to the clerk of the court before which the accused is required by it to appear; and if the accused fail to give such bond, he must be committed to the county jail until the next term of the circuit or city court of the county having jurisdiction of the offense, unless he elect in the meantime to perform hard labor for the county, as provided in section 464.

§ 499. *Judge to decide law and fact, without jury.*—In trials of misdemeanors before the county court, the judge shall determine both the law and the facts, without the intervention of a jury, and shall award the punishment which the character of the offense demands; and no statement of the offense need be made, other than that contained in the affidavit and warrant of arrest.

§ 500. *Form of judgment of conviction.*—The judgment, in cases of conviction, may be in the following form:

"The State } [Here state the offense, by name,
v. } or as described in the affidavit.]
C. D. }

"On hearing the evidence, the court is satisfied of the guilt of the defendant, and awards the following punishment," [here state the punishment imposed,] "and the costs of the proceedings."

"D. C.
judge of county court.

§ 501. *Judgment discharging defendant.*—If the defendant be acquitted, the judgment entry may be, that the defendant is discharged.

§ 502. *Judgment for costs against prosecutor.*—If the prosecution appears to the court to be malicious and frivolous, the court shall tax the prosecutor with the costs; in which case, the judgment entry may be as follows:

"The State } Prosecution for [here describe the
v. } offense by name, or some familiar des-
C. D. } cription,] instituted by A. B.

"In this case, the prosecution appearing to be malicious and frivolous, the costs are taxed against A. B., the prosecutor."

§ 503. *Jeofails and amendments.*—It shall be no objection to the proceedings of the county court, either in that court, or elsewhere, that they are imperfect, or inaccurate;

and when its proceedings are reviewed on appeal or *certiorari*, all amendable errors shall be regarded as amended, so as to present only the substantial inquiry of the guilt or innocence of the accused.

§ 504. *Appeal to circuit or city court; appeal bond.*—In all cases of conviction in the county court, the defendant shall have the right of appeal to the circuit or city court of the county, on entering into bond, with two or more sufficient sureties, to appear at the term of the court to which the appeal is taken, and from term to term until discharged, to abide by and perform whatever sentence may be adjudged against him; the bond to be in such penalty as the judge of the county court may prescribe, and to be approved by him.

§ 505. *Transcript &c., returned to court.*—When an appeal is taken under the preceding section, the judge of the county court shall make out a copy of all the proceedings had in his court, except the subpœnas for witnesses and the appeal bond; certify the same as correct, and hand the transcript, together with the appeal bond, to the clerk of the circuit or city court, who shall place the same on his trial docket of criminal cases.

§ 506. *Subpœnas for witnesses.*—In cases of appeal from the county court, the judge of the said court shall issue subpœnas for such witnesses as may be required, both for the State, and for the accused, returnable to the next term of the court to which the appeal is taken; which subpœnas shall be executed by the sheriff, and returned to said circuit or city court; and if witnesses so summoned fail to appear and testify as required, they shall be liable to the same penalties, forfeitures, and proceedings, as if the subpœnas had been issued out of the circuit or city court.

§ 507. *Forfeiture of appeal bond; alias warrant of arrest to issue.*—If the defendant fails to appear at the circuit or city court as required by the appeal bond, he shall be liable to the same penalties, forfeitures, and proceedings, as on a forfeited bail-bond taken in that court; and a new warrant of arrest may issue from that court, without any other authority therefor.

§ 508. *Arrest on warrant as on* capias.—Such warrant of arrest must be directed to any sheriff of the State of Alabama; and when the defendant is arrested, he must be dealt

with in all respects as if the arrest had been made on *capias* from the circuit court.

§ 509. *Trial of appeal* de novo; *statement of charge.* The trial in the circuit or city court shall be *de novo*, and without any indictment or presentment by the grand jury; but the solicitor shall make a brief statement of the cause of complaint, signed by him, which may be in the following form:

"The State of Alabama, } In the circuit [or city] court,
County. } ——— term, 186—. On appeal from the county court.

"The State of Alabama, by its solicitor, complains of C. D., that within twelve months before the commencement of this prosecution, he did," &c., as in cases of indictment.

§ 510. *Practice, evidence, &c., same as in other cases.* On the trial of such appeals, the court shall be governed by the same rules, as to evidence, practice, finding of the jury, and punishment, as if the case had originated in that court.

§ 511. *On conviction, and sentence to hard labor, additional labor imposed for costs.*—If, on conviction before the county, circuit, or city court, judgment is rendered against the accused, that he perform hard labor for the county, and if the costs are not presently paid, then the court may impose additional hard labor for the county, for a term sufficient to cover the costs to the county for State witnesses and the judge's fees, allowing not exceeding forty cents *per diem* for the additional labor imposed.

CHAPTER VIII.

PROCEEDINGS IN THE CIRCUIT AND CITY COURTS.

Article 1. Formation of grand and petit juries.
" 2. Powers and duties of grand jurors.
" 3. Indictments; form, and contents of; amendments, and substitution when lost or destroyed.
" 4. Arrest, and bail.
" 5. Arraignment, and trial.
" 6 Removal of trial.

ARTICLE 1.

Formation of grand and petit juries.

Section 512. List of householders and freeholders procured by sheriff.
" 513. Jurors selected from list, when, and by whom; qualifications.
" 514. Exemptions from jury duty.
" 515. List of selected persons filed in probate court.
" 516. Names separated, folded up, and put in box.
" 517. Jurors for regular terms; when drawn, how many, &c.
" 518. Petit jurors for special terms.
" 519. Manner of drawing jurors.
" 520. Names drawn deposited in separate box, and not again drawn until whole list exhausted.
" 521. List of jurors drawn delivered to clerk.
" 522. Venire for grand and petit jurors issued by clerk.
" 523. Executed and returned; when, and how.
" 524. Judgment *nisi* against defaulting juror.
" 525. Excuse for default.
" 526. *Sci fa.* on judgment *nisi*.
" 527. Judgment final.
" 528. Excuses allowed by court.
" 529. Names of jurors not attending or excused returned to jury box; exception.
" 530. Number of grand jury; foreman.
" 531. Deficiency, supplied how.
" 532. Oath of foreman.
" 533. Oath of other grand jurors.
" 534. Special grand jury at regular term.
" 535. Grand jury at special term.
" 536. Above provisions directory merely.
" 537. No challenge to array of grand jury.
" 538. Special juries organized in default of regular.
" 539. Penalty on officer for neglect in drawing or summoning jury.
" 540. Petit juries arranged for business.
" 541. Tales-men.
" 542. Oath of petit jurors.
" 543. Drawing jury unfairly; penalty.

§ 512. *List of householders and freeholders procured by sheriff.*—It is the duty of the sheriff of each county to obtain, biennially, a list of all the householders and freeholders residing in his county; from which list must be selected, as hereinafter provided, the names of such persons as may be thought competent to discharge the duties of grand and petit jurors for the county.

§ 513. *Jurors selected from list, when, and by whom; qualifications.*—The sheriff, judge of probate, and clerk of the circuit or city court, or any two of them, must meet, biennially, on the first Monday in May, or within thirty days thereafter, at the office of the clerk of the circuit or

city court, and select from said list the names of such persons as, in their opinion, are competent to discharge the duties of grand and petit jurors with honesty, impartiality, and intelligence, and are esteemed in the community for their integrity, fair character, and sound judgment; but no person must be selected who is under twenty-one years of age, or over sixty years of age, or who is a habitual drunkard, or who is afflicted with a permanent disease.

§ 514. *Exempts from jury duty.*—The following persons are exempt from jury duty, unless by their own consent: professors and students of universities and colleges; teachers and pupils of academies and common schools; ministers in charge of churches; judges of the several courts; attorneys-at-law, during the time they practice their profession; practicing physicians; county commissioners; officers of the United States; officers of the executive department of the State government; sheriffs, and their deputies; clerks of courts, and coroners; keepers of public mills, ferries, toll-bridges, and toll-gates; the president, directors, and other officers of incorporated banks; the officers of any railroad, or other road, constructed under the authority of this State, whose duties would materially interfere with serving on juries; the officers and crew of any steamboat navigating the rivers of this State; members of incorporated fire-companies; officers of the penitentiary; and all mail-contractors, mail-agents, and public stage drivers.

§ 515. *List of selected persons filed in probate court.*—A list of the persons selected as jurors must be written in a fair hand, setting forth the christian name and surname of each, with his place of residence and occupation, if known; which list must be filed in the office of the judge of probate, within ten days after the selection is made.

§ 516. *Names separated, folded up, and put in box.*—The judge of probate, on receiving such list, must write the name of each person therein contained, with his place of residence and occupation, if it appears from the list, on a separate piece of paper; must fold or roll up such pieces of paper, as nearly as may be, in the same manner, so that the name may not be visible, and deposit the same in a box, which must be secured by sufficient locks, and kept by him.

§ 517. *Jurors for regular terms; when drawn, how many,*

&c.—At least twenty days before the day fixed by law for holding each regular term of the circuit or city court of the county, the judge of probate, sheriff, and clerk of the circuit or city court, or a majority of them, must draw from the box the names of eighteen persons, to serve as grand jurors at such court; and also the names of the requisite number of other persons to serve as petit jurors, allowing thirty persons for each week of the term prescribed by law, or, if the term is unlimited, for each week during which, in the opinion of the clerk, a jury will be required.

§ 518. *Petit jurors for special terms.*—When a special term of the court is to be held, for the trial of unfinished business, the names of thirty persons must be drawn from the box, to serve as petit jurors, for each week of the term, and such drawing must take place twenty days before the commencement of the term; when for the trial of a person charged with a felony, fifty names must be drawn, if the offense may be punished capitally, and if not twenty-four, to serve as petit jurors, and such drawing must take place ten days before the commencement of the term.

§ 519. *Manner of drawing jurors.*—The drawing of jurors must be conducted as follows: One of the officers present must shake the box containing the names, so as to mix the slips of paper as much as possible. One of them must then publicly draw out of the box, in the presence of the others, eighteen names for the grand jury, if the drawing is for a regular term, or for a special term at which a grand jury is required, and the requisite number for petit jurors; and if for a special term at which a grand jury is not required, the requisite number of petit jurors only. A minute of the drawing must be kept by one of the officers, and each name, as it is drawn, must be entered before another is drawn. If, after the required number of names have been drawn, it appears that any one of the persons so drawn is dead, or has become insane, or has permanently removed from the county, or is otherwise disqualified, an entry of such death or disqualification must be made on the minutes, the slip containing the name must be destroyed, and another name must be drawn as before; and the same proceedings must be had, as often as may be necessary, until the whole number of jurors is completed. The minutes of the draw-

ing must then be signed by the officers present, and filed in the office of the judge of probate.

§ 520. *Names drawn deposited in separate box, and not again drawn until whole list exhausted.*—The slips of paper drawn from the box under the provisions of the last preceding section, must be deposited in another box, which must be secured by sufficient locks, and safely kept by the judge of probate; and said slips must not be again placed in the first box, nor must the persons whose names are written thereon be required to serve as grand or petit jurors, until all the names contained in the first box have been drawn, or until a new list of the householders and freeholders of the county has been provided by the sheriff, as required by section 512, unless the names of such persons are returned to the first box under the provisions of section 529.

§ 521. *List of jurors drawn delivered to clerk.*—A list of the persons so drawn to serve as grand jurors, with the place of residence and occupation of each, if known, must be made out by the judge of probate, signed by him, and delivered to the clerk of the circuit or city court, as the case may be; and a similar list of the persons drawn as petit jurors, specifying the week for which each was drawn.

§ 522. *Venire for grand and petit jurors issued by clerk.*—On the receipt of such lists, the clerk must issue an order, in writing, to the sheriff of the county, commanding him to summon the persons drawn as grand jurors to appear and serve in that capacity, and a similar order for the summons of the persons drawn to serve as petit jurors; specifying in the orders the full name, place of residence, and occupation of each person, and the particular week for which each petit juror is to serve.

§ 523. *Executed and returned; when, and how.*—The orders for the summons of jurors, provided for in the last preceding section, must be executed by the sheriff, or other person acting in his place, by giving personal notice to each person, or by leaving a written notice at the place of his residence, with some member of his family, or some white person residing in the same house, three days before the day appointed for the commencement of the court; and must be returned to the clerk of the court from which it

issued, with the proper return thereon, by the day appointed for the meeting of the court.

§ 524. *Judgment nisi against defaulting juror.*—Any person duly summoned as a grand or petit juror, who fails to attend as commanded, must be fined by the court, not less than fifty, nor more than one hundred dollars; for which a conditional judgment must be rendered against him, in favor of the State, for the use of the particular county, to be made absolute unless he appear and render a good excuse for his non-attendance.

§ 525. *Excuse for default.*—A juror may render his excuse for non-attendance at the same term at which such conditional judgment was rendered against him, or at any subsequent term before the judgment is made absolute; and if the excuse is deemed sufficient by the court, he must be discharged from the fine and costs; and the judgment must in no case be made absolute, unless he appears, or is personally served with notice as hereinafter provided.

§ 526. Sci. fa. *on judgment* nisi.—If a defaulting juror fails to appear and render his excuse to the court at the term at which a conditional judgment is rendered against him, the clerk must issue a notice to him of the rendition of such conditional judgment, and that the same will be made absolute at the next term, unless he appear and show a good excuse for his default; which notice must be executed by the sheriff, or other officer acting in his place, by serving the defaulter with a copy thereof; and if not executed by the next term of the court, it may be renewed to the next succeeding term; and so on until the same is executed.

§ 527. *Judgment final.*—On such notice being returned executed by the proper officer, if the defaulter fails to appear, or fails to render a good excuse for his default, the judgment must be made absolute against him.

§ 528. *Excuses allowed by court.*—The court may excuse from service any person summoned as a juror, if he is disqualified, or exempt, or for any other reasonable or proper cause, to be determined by the court.

§ 529. *Names of jurors not attending or excused returned to jury box; exception.*—Immediately after the adjournment of the court, the clerk must furnish the judge of probate with a list of the names of all persons drawn as jurors, who

failed to attend, or were excused or discharged by the court for the term, or whose services were entirely dispensed with on account of the adjournment or failure of the court; the slips of paper containing the names of those who were excused or discharged on account of any disqualification, or other cause of a permanent nature, must be destroyed, and the names of all the others must be again deposited by the judge of probate in the box containing the undrawn ballots.

§ 530. *Number of grand jury; foreman.*---At least fifteen persons must be sworn on the grand jury, one of whom must be appointed as foreman by the court; and if he is discharged or excused for any cause, after the jury is sworn or charged, the court may appoint another in his place.

§ 531. *Deficiency, supplied how.*---If fifteen persons, duly qualified to serve as grand jurors, do not appear; or if the number of those who appear is reduced below fifteen, by reason of discharges or excuses allowed by the court, or by any other cause, the court must cause an order to be entered on the minutes, commanding the sheriff to summon, from the qualified citizens of the county, twice the number of persons required to complete the grand jury; which order the sheriff must forthwith execute, and the persons summoned by him are bound to appear presently, and, if necessary, to serve as grand jurors, under the same penalties as if they had been regularly drawn and summoned on the original list of grand jurors for the term; and of the persons so summoned, if a greater number appear than are necessary to complete the grand jury, the names must be written on separate slips of paper, which must be folded or rolled up so that the name may not be visible, placed in a box, or some substitute therefor, and from them must be drawn, under the direction of the court, a sufficient number of names to complete the grand jury.

§ 532. *Oath of foreman.*---The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury of —— county, do solemnly swear," (or affirm, as the case may be,) "that you will diligently inquire, and true presentment make, of all indictable offenses given you in charge, as well as those brought to your knowledge, committed or triable within the county; the State's counsel, your fellows, and your own,

you shall keep secret; you shall present no person from envy, hatred, or malice, nor leave any one unpresented from fear, affection, reward, or the hope thereof; but you shall present all things truly, as they come to your knowledge, to the best of your understanding: so help you God."

§ 533. *Oath of other grand jurors.*---After the oath above prescribed has been administered to the foreman, the following oath must be administered to the other grand jurors: "The same oath which your foreman has taken on his part, you and each of you, on your respective parts, shall well and truly observe and keep: so help you God."

§ 534. *Special grand jury at regular term.*—When any indictable offense is committed during the session of the court, after the grand jury has been discharged, the court may, in its discretion, cause an order to be entered on the minutes, commanding the sheriff forthwith to summon eighteen persons, possessing the requisite qualifications of grand jurors; which order the sheriff must immediately execute, and the persons summoned by him must attend, and, if required, serve as grand jurors, under the same penalties as are by law prescribed for persons regularly drawn and summoned as grand jurors; and from the persons so attending, with such others as may be necessary to supply any deficiency, (to be summoned and drawn as in other cases,) a special grand jury must be organized, sworn, and charged, as in other cases; and it is the duty of such special grand jury to investigate the offense, and to proceed thereon as a regular grand jury.

§ 535. *Grand jury at special term.*—A grand jury may be organized at any special term of the circuit court, whenever, in the opinion of the presiding judge, the public good requires it; such grand jury to be organized in the same manner, and its proceedings to be governed in all respects by the same rules, as by law provided for a grand jury organized at a regular term of the court.

§ 536. *Above provisions directory merely.*—The provisions of this article, in relation to the selection, drawing, and summoning of jurors, are merely directory; and juries selected, drawn, and summoned, whether at an earlier or later day, must be deemed legal, and possess the power to perform all the duties belonging to grand and petit juries respectively.

§ 537. *No challenge to array of grand jury.*—It is the duty of the court, before charging the grand jury, to ascertain whether the jurors possess the requisite qualifications; and no challenge to the array of a grand jury can be interposed by any person.

§ 538. *Special juries organized in default of regular.*—If, in consequence of any neglect on the part of the judge of probate, sheriff, or clerk of the circuit or city court, or from any other cause, no grand or petit jury is returned to serve at any term of the court, or no petit jury summoned for any week thereof, the court may, by an order entered on the minutes, direct the sheriff forthwith to summon eighteen persons qualified to serve as grand jurors, and the requisite number to serve as petit jurors; and the persons so summoned, failing to attend, are subject to the same penalties as if they had been regularly drawn and summoned, to be recovered in the same manner; the court may supply any deficiency as in other cases, and a jury thus organized is in all respects legal.

§ 539. *Penalty on officer for neglect in drawing or summoning jury.*—When, by any neglect of the duties imposed by this article on the judge of probate, sheriff, and clerk of the circuit or city court, a grand or petit jury is not duly drawn and summoned at any term of the court, a conditional fine of five hundred dollars may be imposed by the court on the officers in default, to be entered and made absolute as against defaulting jurors.

§ 540. *Petit juries arranged for business.*—To dispose of the petit jurors for the transaction of business, the clerk must, on the day on which they are summoned to attend, prepare by lot a list of their names; the first twelve must be sworn, and called the first jury; the next twelve must then be sworn, and called the second jury; and if there are any more petit jurors in attendance, they may be placed on a third jury, or put on either of the other juries, as occasion may require; and the jurors may be transferred from one jury to another, as the convenience of the court or the dispatch of business requires.

§ 541. *Tales-men.*—When, by reason of challenges, or any other cause, it is rendered necessary, the court may cause petit jurors to be summoned, either from the bystanders, or from the county at large, to supply any defi-

ciency on a regular jury, or to form one or more entire juries, as the occasion may require; such jurors are called tales-men, and must not be compelled to serve longer than the day for which they were respectively summoned, unless detained longer in the trial of an issue, or the execution of a writ of inquiry, submitted to the jury of which they are respectively members, or unless they are re-summoned; and any such juror failing to attend, or withdrawing, without leave of the court, before the expiration of his term of service, may be fined twenty dollars by the court; for which a conditional judgment may be entered, to be made absolute as in the case of regular jurors.

§ 542. *Oath of petit jurors.*—The following oath must be administered by the clerk, in the presence of the court, to each of the petit jurors: "You do solemnly swear," (or affirm, as the case may be,) "that you will well and truly try all issues, and execute all writs of inquiry, which may be submitted to you during the present term," (or week, as the case may be,) "and true verdicts render according to the evidence: so help you God;" and the same oath must be administered to the tales-men, substituting the word *day* for *term*.

§ 543. *Drawing jury unfairly; penalty.*—If any person does any act calculated to affect the fair drawing of a jury, and with intent to affect the same, he must, on conviction, be fined not less than two hundred, nor more than one thousand dollars, and may also be imprisoned in the county jail for not more than six months; and if such person is the judge of probate, sheriff, or clerk of the circuit or city court, his office is thereby vacated, and must be filled as in other cases of vacancy, on such conviction being certified to the appointing power by the presiding judge or the clerk of the court in which it is had.

ARTICLE II.

Powers and duties of grand jurors.

Section 544. Duties of grand jury; inspection of jail, county offices and bonds, indictable offenses, &c.

" 545. Entitled to free access to jail and county offices.

" 546. Indictments for misdemeanors discretionary.
" 547. Juror must disclose offenses known to him.
" 548. Juror must withdraw when interested.
" 549. Deficiency, in such case, supplied how.
" 550. Witnesses sworn by foreman or solicitor; list returned to court.
" 551. Subpœnas for witnesses; proceedings against defaulters.
" 552. Attendance of solicitor.
" 553. Legal evidence only received.
" 554. Indictment found by twelve; endorsed 'true bill,' &c.
" 555. Endorsement of prosecutor's name, &c.
" 556. Liability of prosecutor and foreman for costs.
" 557. When juror may be required to disclose testimony before grand jury.

§ 544. *Duties of grand jury; inspection of jail, county offices and bonds, indictable offenses, &c.*—It is the duty of the grand jury to make a personal inspection of the condition of the county jail, in regard to its sufficiency for the safe-keeping of prisoners, their accommodation, and their health, and to inquire into the manner in which the same has been kept since the last term of the court; to examine into the condition of the county treasury, and the bonds of all county officers, with regard to their correctness and sufficiency, and to report upon the same; to inquire into all indictable offenses committed or triable in the county, which, as they may be advised by the court, are not barred by lapse of time or some other cause; and to perform all and singular such other duties as are or may be by law required of them.

§ 545. *Entitled to free access to jail and county offices.*—They are entitled to free access, at all proper hours, to the county jail, and to the office of the county treasury, and to the examination, without charge, of all records and other papers in any of the county offices connected in any way with their duties.

§ 546. *Indictments for misdemeanors discretionary.*—They are not bound to find an indictment for any misdemeanor, where no prosecutor appears, unless twelve of their number think it necessary for the public good.

§ 547. *Juror must disclose offenses known to him.*—If any grand juror knows, or has reason to believe, that a public offense has been committed which may be indicted and tried in that county, it is his duty to disclose the same to his fellow jurors, who must thereupon investigate it.

§ 548. *Juror must withdraw when interested.*—A grand

juror must not be present at, nor take any part in the deliberations of his fellow jurors, respecting any public offense with which he is charged, or which was committed against his person or property, or where he is a prosecutor, or where he is connected by blood or marriage with the person charged.

§ 549. *Deficiency, in such case, supplied how.*—If, by reason of the provisions of the last preceding section, the number of grand jurors is reduced below thirteen in the investigation of any matter, the court must supply the deficiency from the by-standers: and the persons so placed on the grand jury must serve only during such investigation.

§ 550. *Witnesses sworn by foreman or solicitor; list returned to court.*—Oaths may be administered to witnesses before the grand jury while in session, either by the foreman, or by the solicitor; and a list of all the witnesses who have been sworn before the grand jury during the term, certified by him to be correct, must be returned to the court by the foreman, and the same must be filed as a record by the clerk.

§ 551. *Subpœnas for witnesses; proceedings against defaulters.*—The solicitor, or the clerk of the court, on the application of the grand jury, must issue subpœnas for any witnesses, whom they may require to give evidence before them; and if witnesses, so summoned, fail to attend, the subpœna must be returned to court, with the default thereon endorsed, signed by the foreman; and the same proceedings may thereupon be had against them as against other defaulting witnesses, the endorsement of the foreman being presumptive evidence of the default.

§ 552. *Attendance of solicitor.*—The solicitor must attend before the grand jury, when required by them, for the purpose of examining witnesses in their presence, or giving them legal advice as to any matter connected with their duties; and he may appear before them, at any time, to give information as to any matter cognizable by them; but he must not be present at the expression of their opinions, or the giving of their votes on any matter before them.

§ 553. *Legal evidence only received.*—In the investigation of a charge for any indictable offense, the grand jury can

receive no other evidence than is given by witnesses before them, or furnished by legal documentary evidence.

§ 554. *Indictment found by twelve; endorsed, 'true bill,' &c.*—The concurrence of at least twelve grand jurors is necessary to find an indictment; and when so found, it must be endorsed 'a true bill,' and the endorsement signed by the foreman.

§ 555. *Endorsement of prosecutor's name, &c.*—If a prosecutor appears, his name must be endorsed by the foreman on the indictment; and if no prosecutor appears, the words 'no prosecutor' must be endorsed thereon.

§ 556. *Liability of prosecutor and foreman for costs.*—When the indictment is for a misdemeanor, and the court is of opinion that the prosecution is frivolous or malicious, the prosecutor is liable for the costs; and if the foreman of the grand jury fails to make the endorsement required of him by the last section, he is liable for the costs as if he were the prosecutor.

§ 557. *When juror may be required to disclose testimony before grand jury.*—A grand juror may be required by any court to disclose the testimony of any witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with the testimony given by the witness before the court, or on a charge of perjury against him.

ARTICLE III.

Indictments; form, and contents of; amendments, and substitution when lost or destroyed.

Section 558. What offenses are indictable.
" 559. Definition of indictment.
" 560. No distinction between indictment and presentment.
" 561. Caption, and conclusion.
" 562. Statement of offense.
" 563. Name or description of defendant.
" 564. Statement of venue.
" 565. Statement of time.
" 566. Fact unknown to jury.
" 567. Same.
" 568. Legal presumptions, and matters judicially known.
" 569. Statute words not necessary.
" 570. Offense described as at common law.
" 571. Special and general terms.
" 572. Description of public place.

" 573. Statement of means or intents in alternative.
" 574. Same, as to results.
" 575. Joinder of offenses in same count.
" 576. Averment of intent to injure or defraud.
" 577. Averment of ownership of property.
" 578. Construction of words used.
" 579. No distinction between accessories and principals.
" 580. Judgment pleaded without averring jurisdictional facts.
" 581. Indictment for forgery of instrument destroyed or withheld.
" 582. Indictment for libel.
" 583. For retailing spirituous liquors.
" 584. For gaming.
" 585. For exhibiting gaming-tables, &c.
" 586. Carrying concealed weapons.
" 587. Embezzlement.
" 588. Description of animal stolen, &c.
" 589. Indictment for perjury, or subornation.
" 590. For disturbing females at public assembly.
" 591. Forms in appendix sufficient.
" 592. Formal defects not fatal.
" 593. Amendment allowed, by consent, on account of variance.
" 594. Or *nolle-pros.* entered, and new indictment preferred.
" 595. Indictment lost or destroyed, another preferred.
" 596. On arrest of judgment, &c., another indictment preferred.
" 597. Statute of limitations suspended in such cases.

§ 558. *What offenses are indictable.*—All felonies, and all misdemeanors originally prosecuted in the circuit or city court, are indictable offenses.

§ 559. *Definition of indictment.*—An indictment is an accusation in writing, presented by the grand jury of the county, charging a person with an indictable offense.

§ 560. *No distinction between indictment and presentment.* The distinction between indictments and presentments is abolished.

§ 561. *Caption, and conclusion.*—An indictment must contain, in the caption or body thereof, the name of the State, county, court, and term, in and at which it is preferred; and must conclude 'against the peace and dignity of the State of Alabama.'

§ 562. *Statement of offense.*—It must state the facts constituting the offense, in ordinary and concise language, without prolixity, or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment; and in no case are the words 'force and arms,' or 'contrary to the form of the statute,' necessary.

§ 563. *Name or description of defendant*—It must be certain as to the person charged; but, when his name is unknown to the grand jury, it may be so alleged without further identification.

§ 564. *Statement of venue.*—It is not necessary to allege where the offense was committed; but it must be proved, on the trial, to have been committed within the jurisdiction of the county in which the indictment is preferred.

§ 565. *Statement of time.*—It is not necessary to state the precise time at which the offense was committed; but it may be alleged to have been committed on any day before the finding of the indictment, or generally before the finding of the indictment, unless time is a material ingredient of the offense.

§ 566. *Fact unknown to jury.*—Any fact which is unknown to the grand jury, and which is not a material ingredient of the offense, may be so charged in the indictment.

§ 567. *Same.*—When the means by which the offense was committed, are unknown to the grand jury, and do not enter into the essence of the offense, the indictment may allege that they are unknown to the jury.

§ 568. *Legal presumptions, and matters judicially known.* Presumptions of law, and matters of which judicial notice is taken, need not be stated.

§ 569. *Statute words not necessary.*—Words used in a statute to define an offense, need not be strictly pursued in the indictment: it is sufficient to use other words, conveying the same meaning.

§ 570. *Offense described as at common law.*—In an indictment for any offense which was indictable at common law, the offense may be charged or described as at common law; and the defendant, if convicted, must receive the punishment prescribed by the statute.

§ 571. *Special and general terms.*—When a statute, creating or defining an offense, uses special or particular terms, an indictment on it may use the general term which, in common language, embraces the special term.

§ 572. *Description of public place.*—When, to constitute the offense, an act must be done in a public place, and such public place is not more particularly defined in the statute, it is sufficient to allege that the act was done 'in a public place' generally.

§ 573. *Statement of means or intents in alternative.*—When the offense may be committed by different means, or with different intents, such means or intents may be alleged in the same count, in the alternative.

§ 574. *Same, as to results.*—Where an act is criminal, if producing different results, such results may be charged in the same count, in the alternative.

§ 575. *Joinder of offenses in same count.*—Where offenses are of the same character, and subject to the same punishment, the defendant may be charged with the commission of either in the same count, in the alternative.

§ 576. *Averment of intent to injure or defraud.*—When an intent to injure or defraud is necessary to constitute the offense, it is sufficient to allege an intent to injure or defraud generally, without naming the particular person, corporation or government intended to be injured or defrauded.

§ 577. *Averment of ownership of property.*—When any personal property, upon or in relation to which the offense was committed, belongs to several partners or owners, it is sufficient to allege the ownership to be in any one or more of such partners or owners.

§ 578. *Construction of words used.*—The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which must be construed according to their legal meaning.

§ 579. *No distinction between accessories and principals.*—The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abolished; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid or abet in its commission, though not present, must hereafter be indicted, tried, and punished as principals, as in the case of misdemeanors.

§ 580. *Judgment pleaded without averring jurisdictional facts.*—In pleading a judgment, or other judicial proceeding or determination of any court or officer, such judgment, proceeding, or determination may be alleged to have been duly made or rendered, without stating the facts conferring jurisdiction; but the facts necessary to show jurisdiction must be proved on the trial.

§ 581. *Indictment for forgery of instrument destroyed or withheld.*---In an indictment for the forgery of an instrument which has been destroyed, or is withheld, by the act or procurement of the defendant, if that fact is alleged in the indictment, a misdescription of the instrument is immaterial.

§ 582. *Indictment for libel.*---In an indictment for a libel, it is not necessary to set forth any intrinsic facts, for the purpose of showing the application to the libeled party of the defamatory matter on which the indictment is founded: it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be proved on the trial.

§ 583. *For retailing spirituous liquors.*---In an indictment for retailing vinous or spirituous liquors without a license, it is sufficient to charge, that the defendant sold vinous or spirituous liquor without a license, and contrary to law; and on the trial, any act of retailing, in violation of the law, may be proved.

§ 584. *For gaming.*---In an indictment for gaming, under section 78, it is not necessary to state the name of the game played: it is sufficient to charge, that the defendant 'played at a game with cards, or dice, or some device or substitute for cards or dice,' in one or more of the places enumerated in that section, or in a public place; and it is not necessary to prove, on the trial, what the game was called.

§ 585. *For exhibiting gaming-tables, &c.*---In an indictment for keeping or exhibiting a gaming-table, under section 79, it is sufficient to charge, in general terms, that the defendant 'kept, exhibited, or was interested or concerned in keeping or exhibiting, a gaming-table for gaming,' without describing the table more particularly, or alleging in what manner the defendant was interested or concerned in keeping or exhibiting it; nor is it necessary to allege or prove that any money was bet at the table.

§ 586. *Carrying concealed weapons.*---In an indictment for carrying concealed weapons, it is sufficient to charge that the defendant 'carried concealed about his person a pistol, or other description of fire-arms,' or 'a bowie-knife, or other knife or instrument of the like kind or description,' without averring the want of a legal excuse on his part;

and the excuse, if any, must be proved by the defendant, on the trial, to the satisfaction of the jury.

§ 587. *Embezzlement.*—In an indictment for embezzlement, or other offense, under section 103, 171, 172, 173, or 174, it is sufficient to describe the property in general terms; as 'money,' 'bank-notes,' 'checks,' 'bills of exchange,' or other evidences of debt, of or about a certain amount.

§ 588. *Description of animal stolen, &c.*—In an indictment for the larceny of any animal, or for any other public offense committed in reference to any animal, it is sufficient to describe the animal by such name as in the common understanding embraces it, without designating its sex.

§ 589. *Indictment for perjury, or subornation.*—In an indictment for perjury, or subornation of perjury, it is not necessary to set forth the pleadings, record, or proceedings with which the false oath is connected, nor the commission or authority of the court or person before whom the perjury was committed: it is sufficient to state the substance of the proceedings, the name of the court or officer before whom the oath was taken, and that such court or officer had authority to administer it, with the necessary allegations of the falsity of the matter on which the perjury is assigned.

§ 590. *For disturbing females at public assembly.*—In an indictment for disturbing the females in any public assembly, under section 72, it is sufficient to charge, that the defendant 'willfully disturbed an assemblage of people, composed in whole or in part of females, by rude or indecent behavior, or by profane or obscene language.'

§ 591. *Forms in appendix sufficient.*—The forms of indictments given in the appendix, in all cases in which they are applicable, are sufficient; and analogous forms may be used in other cases.

§ 592. *Formal defects not fatal.*—An indictment must not be held insufficient, nor can the trial, judgment, or any other proceeding thereon be affected, by reason of any defect or imperfection in any matter of form, which does not prejudice the substantial rights of the defendant on the trial.

§ 593. *Amendment allowed, by consent, on account of variance.*—An indictment may be amended, with the consent of the defendant, when the name of the defendant is incor-

rectly stated, or when any person, property, or matter therein stated, is incorrectly described.

§ 594. *Or* nolle-pros. *entered, and new indictment preferred.*—If the defendant will not consent to such amendment, the prosecution may be dismissed, at any time before the jury retire, as to the count in the indictment to which the variance applies; and the court may order another indictment to be preferred, at the same, or at a subsequent term; in which case, an entry of record must be made, to the effect following:

"The State } In this case, it appeared from the evidence,
vs. } that there was a variance between the allega-
A. B. } tions of the indictment and the proof, in this," setting out the variance; or, "it appeared from the evidence that the defendant's name was ——," stating it; "and the defendant refusing to allow the indictment to be amended, the prosecution was dismissed before the jury retired, and another indictment was ordered to be preferred."

§ 595. *Indictment lost or destroyed, another preferred.*—When an indictment is lost, mislaid, or destroyed, the court may, on satisfactory proof thereof, order another indictment to be preferred, at the term at which such proof is made, or at a subsequent term; in which case, an entry of record must be made, to the effect following:

"The State } In this case, it appearing to the court that
vs. } an indictment was preferred against the
A. B. } defendant at the —— term, 18—," (stating the time,) "and that said indictment is lost, mislaid, or destroyed; it is therefore ordered, that a new indictment be preferred against the defendant for the same offense."

§ 596. *On arrest of judgment, &c., another indictment preferred.*—When the judgment is arrested, or the indictment quashed, on account of any defect therein, or because it was not found by a grand jury regularly organized, or because it charged no offense, or for any other cause, the court may order another indictment to be preferred for the offense charged, or intended to be charged; and in such case, an entry of record must be made, setting forth the facts.

§ 597. *Statute of limitations suspended in such cases.*—

When a new indictment is preferred under the provisions of any one of the last three preceding sections, the time which elapsed between the finding of the first and the subsequent indictment must be deducted from the time limited by law for the prosecution of the offense.

ARTICLE IV.

Arrest, and bail.

Section 598. Indictment filed in court, but not entered of record, nor inspected.
" 599. Not quashed, &c., without leave of court.
" 600. Defendant arrested, if present, without process.
" 601. Writ of arrest issued by clerk, solicitor, &c.
" 602. Form of writ, for felony.
" 603. Same, for misdemeanor.
" 604. Executed by sheriff, &c.
" 605. Discharge on bail, by sheriff, for misdemeanor.
" 606. Form of undertaking of bail.
" 607. Discharge on bail, in open court.
" 608. Same, in vacation, by sheriff, for felony.
" 609. Same, for misdemeanor.
" 610. On commitment, copy of writ delivered to jailor.
" 611. Return of writ executed, with undertaking of bail.
" 612. Return of writ not executed.
" 613. Sheriff attached and fined, for failure to make return.
" 614. Returns by mail taken from office by clerk, &c.
" 615. Sheriff fined, &c., for failure to execute writ.
" 616. *Alias* writ of arrest.

§ 598. *Indictment filed in court, but not entered of record, nor inspected.*—All indictments must be presented to the court, by the foreman of the grand jury, in the presence of at least eleven other jurors; must be endorsed 'filed,' and the endorsement dated and signed by the clerk; but no entry of an indictment found must be made on the minutes, nor must any indictment be inspected, by any other person than the solicitor, the presiding judge, and the clerk of the court, until the defendant has been arrested, or has given bail for his appearance.

§ 599. *Not quashed, &c., without leave of court.*—An indictment must not be quashed, dismissed, discontinued, or abandoned, without the permission of the court; and such permission must be entered of record.

§ 600. *Defendant arrested, if present, without process.*—

After an indictment has been returned by the grand jury, the court may order any defendant who is present, and who has not been arrested, to be taken into custody without process.

§ 601. *Writ of arrest issued by clerk, solicitor, &c.*—A writ of arrest must be issued by the clerk, as soon as practicable after the filing of the indictment, against each defendant who is not in actual custody, or who has not been bailed, or whose undertaking of bail has been declared forfeited; or it may be issued, without an order of court, either in term time or vacation, by the solicitor of the circuit, or by any circuit judge.

§ 602. *Form of writ, for felony.*—When the indctment is for a felony, the writ of arrest may be in the following form:

"The State of Alabama, }
County. } To any sheriff of the State:

An indictment having been found against A. B., at the —— term, 186—, of the —— court of —— county, for the offense of ——," (describing the offense so as to show that it is a felony,) "you are therefore commanded forthwith to arrest the said defendant, and commit him to jail; and that you return this writ according to law. Dated this —— day of ——, 186—."

(Signed,) "C. D.
clerk of the circuit court of —— county."

§ 603. *Same, for misdemeanor.*—When the indictment is for a misdemeanor, the writ of arrest may be in the same form, except that after the words "commit him to jail," must be added the words "unless he give bail to answer said indictment."

§ 604. *Executed by sheriff, &c.*—A writ of arrest may be executed by the sheriff of any county in the State, or by his deputy; and such officers have the same powers and authority, in relation to arrests under a writ of arrest, as are by law conferred upon them in executing a warrant of arrest.

§ 605. *Discharge on bail, by sheriff, for misdemeanor.*—If the offense charged in the indictment is a misdemeanor, the defendant must be discharged by the sheriff or his deputy, on giving sufficient bail; but the amount of bail must, in no case, be less than one hundred dollars.

§ 606. *Form of undertaking of bail.*—The undertaking of bail, under the provisions of the last section, must be substantially as follows:

"The State of Alabama, }
County. } We, A. B., C. D., and E. F., agree to pay the State of Alabama ——— dollars, unless the said A. B. appears at the next [or present, as the case may be] term of the circuit court of ——— county, and from term to term thereafter until discharged by law, to answer an indictment pending in said court against him for ——," (describing the offense.)

(Signed,) "A. D.
C. D.
E. F."

"Approved, G. H.,
sheriff of —— county."

§ 607. *Discharge on bail, in open court.*—Bail may also be taken in open court, if the offense charged in the indictment is bailable; in which case, the undertaking must be entered of record, in substance as follows:

"In open court came A. B., C. D., and E. F., and agreed to pay the State of Alabama ——— dollars." (the sum prescribed by the court,) "if the said A. B. fails to appear at the present term of this court, and from term to term thereafter until discharged by law, to answer an indictment pending against him for ——," describing the offense charged in the indictment.

§ 608. *Same, in vacation, by sheriff, for felony.*—If the indictment charges a felony, and the defendant fails to give bail in open court under the provisions of the last preceding section, the court must make an order, and cause the same to be entered of record, fixing the amount of bail required; and the sheriff has authority, and it is his duty, to discharge such defendant in vacation, on his giving bail as required by such order.

§ 609. *Same, for misdemeanor.*—If the indictment charges a misdemeanor, and the defendant is committed to jail for want of bail, the sheriff may, at any time, discharge him, on his giving bail in the amount required.

§ 610. *On commitment, copy of writ delivered to jailor.*—When any defendant is committed to jail under a writ of arrest, the sheriff must retain, or deliver to the jailor, a

copy of the writ; which copy is as good authority for the detention of the defendant as the original writ.

§ 611. *Return of writ executed, with undertaking of bail.*—All writs of arrest, with the undertaking of bail, when given, must be returned by the sheriff, to the clerk of the court from which they were issued, with the proper return thereon endorsed. If the writ is executed, the return must be made within five days after service; but, if executed out of the county in which the indictment was found, the return may be made by depositing the writ in the post-office, within five days after service, in a sealed envelop, directed to the clerk of the court, at the court-house of his county, with the title of the case and the character of the process endorsed on the envelop.

§ 612. *Return of writ not executed.*—When any writ of arrest is not executed, it must be returned by the sheriff, to the clerk of the court from which it was issued, by the third day of such court, or before the case is called in order; and when the return is made by the sheriff of any other county than that in which the indictment was found, it may be made by mail, as prescribed by the last preceding section.

§ 613. *Sheriff attached and fined, for failure to make return.*—Any sheriff who fails to comply with the provisions of the last two sections, may be compelled to make the return by attachment, and also forfeits to the State, for the use of the county, fifty dollars; which may be recovered, with costs, against him and his sureties, or any of them, having three days' notice thereof, by motion in the court in which the indictment was found; and on the trial of such motion, the certificate of the postmaster is presumptive evidence of the deposit of the writ of arrest, the superscription, and endorsement on the envelop.

§ 614. *Returns by mail taken from office by clerk, &c.*—The clerk of the court must take from the postoffice all packages addressed to him, which are endorsed according to the provisions of section 611, and the expense of the same must be paid by the county.

§ 615. *Sheriff fined, &c., for failure to execute writ.*—Any sheriff who fails to execute a writ of arrest, from the want of due diligence, to be determined by the court, may be fined one hundred dollars, or less, on one day's notice;

and if such fine is not paid, may be imprisoned in the county jail, for not more than two months.

§ 616. Alias *writ of arrest*.—As many writs of arrest may be issued as are necessary; and after any forfeiture is taken, another writ of arrest may issue without an order.

ARTICLE V.

Arraignment, and trial.

Section 617. Standing mute, or refusing to plead.
" 618. Pleading guilty.
" 619. Right to copy of indictment and list of jury; counsel appointed by court, &c.
" 620. List of tales-men not served.
" 621. Number of jurors summoned for trial of capital offense.
" 622. Penalty on defaulting juror.
" 623. Mistake in juror's name no cause to quash or continue.
" 624. Tales-men peremptorily challenged, but no list served.
" 625. Manner of drawing jury.
" 626. Peremptory challenges by defendant.
" 627. Same, by State.
" 628. Challenges for cause.
" 629. Same; how proved,
" 630. Additional grounds of challenge.
" 631. Same.
" 632. Unfit person excused from jury.
" 633. Aliens not allowed on jury.
" 634. Plea in abatement; how verified.
" 635. Objections to grand jury.
" 636. Same; plea filed at first term; if sustained, new indictment preferred.
" 637. Character of plea determined, how.
" 638. Trial joint or several, in discretion of court.
" 639. Discharge of defendant, to be witness for State.
" 640. Same, to be witness for co-defendants.
" 641. Conviction on testimony of accomplice.
" 642. Proof of rape, or crime against nature.
" 643. Proof of intent to injure or defraud.
" 644. Proof of intent, means, &c.
" 645. Proof as to results of act, &c.
" 646. Evidence of abusive words on trial of assault, &c.
" 647. Conviction of less offense than charged.
" 648. Examination of juror as witness.
" 649. Discharge of sick juror before retirement.
" 650. Discharge of jury on account of sickness, &c. after retirement.
" 651. Discharge by adjournment.
" 652. Verdict and judgment as to several of joint defendants.
" 653. Polling jury.

§ 617. *Standing mute, or refusing to plead*.—If a defend-

ant, when arraigned, refuses or neglects to plead, or stands mute, the court must cause the plea of not guilty to be entered for him.

§ 618. *Pleading guilty.*—If he pleads guilty, the court must cause the punishment to be determined by a jury, except where the punishment is by law required to be fixed by the court; and may, in all cases, in which a plea of guilty is entered, cause witnesses to be examined, to ascertain the character of the offense.

§ 619. *Right to copy of indictment and list of jury; counsel appointed by court, &c.*—If the defendant is indicted for a capital offense, and is in actual confinement, a copy of the indictment, and a list of the jurors summoned for his trial, including the regular jury, must be delivered to him, at least one entire day before the day appointed for his trial; and if he is unable to employ counsel, the court must appoint counsel for him, not exceeding two, who must be allowed access to him at all reasonable hours; and if he is not in actual custody, and has counsel, whose names are so entered on the docket, such counsel must, on application, be furnished with a copy of the indictment and a list of the jurors.

§ 620. *List of tales-men not served.*—If the persons summoned as jurors fail to appear, or if the pannel is exhausted by challenges, neither the defendant nor his counsel is entitled to a list of the persons summoned to supply their places.

§ 621. *Number of jurors summoned for trial of capital offense.*—For the trial of a person charged with a capital offense, or of two or more such persons tried together, the court must make an order, commanding the sheriff to summon, not less than fifty, nor more than one hundred persons, including those summoned on the regular juries for the week (or term, when the term does not exceed one week.)

§ 622. *Penalty on defaulting juror.*—Any person summoned as a juror under the provisions of the last section, who fails to attend, or refuses to serve, must be fined not less than fifty dollars, which may be reduced by the court, if the circumstances justify a reduction; such fine to be collected and applied in the same manner as fines imposed on jurors in other cases.

§ 623. *Mistake in juror's name no cause to quash or*

continue.—A mistake in the name of any person summoned as a juror for the trial of a capital offense, either in the venire, or in the list of jurors delivered to the defendant, is not sufficient cause to quash the venire, or to delay or continue the trial, unless the court, in its discretion, is of opinion that the ends of justice so require; but the court must, in such case, direct the names of such persons to be discarded, and others to be forthwith summoned to supply their places; and the persons so summoned shall be disposed of in the same manner as if they had been summoned in the first instance.

§ 624. *Tales-men peremptorily challenged, but no list served.*—The defendant is not entitled to a list of the persons summoned under the provisions of the last section, but may peremptorily challenge any of them, if drawn on the jury for his trial, in addition to the other peremptory challenges allowed him by law.

§ 625. *Manner of drawing jury.*—On the trial of a person charged with a capital offense, the names of the jurors summoned for his trial, as well as the names of the regular jurors in attendance, must be written on slips of paper, folded or rolled up, placed in a box or some substitute therefor, and shaken together; and such officer as may be designated by the court, must, in his presence, draw out such slips, one by one, until the jury is completed; if all such slips are drawn, and the jury is not made up, the court must direct the sheriff to summon at least twice the number of jurors required to complete the jury, whose names are also to be written on slips of paper, deposited and drawn as herein prescribed; and if such number is exhausted, the same proceedings must be had until the jury is complete.

§ 626. *Peremptory challenges by defendant.*—The defendant is entitled to twenty-one peremptory challenges, when on trial for a capital offense; to fifteen, when on trial for any felony not capital; and to six, when on trial for a misdemeanor.

§ 627. *Same, by State.*—The State is entitled to fourteen peremptory challenges, on the trial of a capital offense; to ten, on the trial of any felony not capital, and to four on the trial of any misdemeanor.

§ 628. *Challenges for cause.*—It is a good ground of challenge, by either party, 1st, that the person has not been

a resident householder or freeholder of the county for the last preceding year; 2d, that he is not a citizen of the United States; 3d, that he has been indicted, within the last twelve months, for an offense of the same character as that with which the defendant is charged; 4th, that he is connected, by consanguinity within the ninth degree, or by affinity within the fifth degree, (computing according to the rules of the civil law,) either with the defendant, or with the prosecutor, or the person alleged to be injured; 5th, that he has been convicted of a felony; 6th, that he has an interest in the conviction or acquittal of the defendant, or has made any promise, or given any assurance, that he will convict or acquit the defendant; and 7th, that he has a fixed opinion as to the guilt or innocence of the defendant, which would bias his verdict.

§ 629. *Same; how proved.*—Of the causes of challenge specified in the last section, the first four may be proved by the oath of the person summoned, or by other evidence; the fifth and sixth by other testimony only, and the seventh by the oath of the person alone.

§ 630. *Additional grounds of challenge.*—On a trial for any offense which may be punished capitally, or by imprisonment in the penitentiary, it is a good cause of challenge by the State, that the person has a fixed opinion against capital or penitentiary punishments, or thinks that a conviction should not be had on circumstantial evidence; which cause of challenge may be proved by the oath of the person, or by other evidence.

§ 631. *Same.*—It is also a good cause of challenge, that a person is under twenty-one, or over seventy years of age, or is of unsound mind, or is a witness for the other party; and such cause of challenge may be proved as the court may direct.

§ 632. *Unfit person excused from jury.*—Any person who appears to the court to be unfit to serve on the jury, may be excused on his own motion, or at the instance of either party.

§ 633. *Aliens not allowed on jury.*—An alien is not entitled to a jury composed in part of aliens or strangers.

§ 634. *Plea in abatement; how verified.*—No plea in abatement, or other dilatory plea to an indictment, must be received, unless it is verified by oath, or unless its truth

appears by some matter of record, or other written evidence, accompanying it.

§ 635. *Objections to grand jury.*—No objection can be taken to an indictment, by plea in abatement or otherwise, on the ground that any member of the grand jury was not legally qualified, or that the grand jurors were not legally drawn or summoned, or on any other ground going to the formation of the grand jury, except that the jurors were not drawn in the presence of the officers designated by law; and neither this objection, nor any other, can be taken to the formation of a special grand jury summoned by the direction of the court.

§ 636. *Same; plea filed at first term; if sustained, new indictment preferred.*—A plea to an indictment, on the ground that the grand jurors by whom it was found were not drawn in the presence of the officers designated by law, must be filed at the term at which the indictment is found; if sustained, the defendant must not be discharged, but must be held in custody, or bailed, as the case may be, to answer another indictment at the same or the next term of the court; and the time elapsing between the first and second indictments, in such case, must not be computed as a part of the period limited by law for the prosecution of the offense.

§ 637. *Character of plea determined, how.*—In criminal proceedings, a plea is to be determined according to its substance, and not by its commencement or conclusion.

§ 638. *Trial joint or several, in discretion of court.*—When two or more defendants are jointly indicted, they may be tried, at the discretion of the court, either jointly or separately.

§ 639. *Discharge of defendant, to be witness for State.*—When two or more defendants are jointly indicted, the court may, at any time before the evidence for the defense has commenced, order any defendant to be discharged from the indictment, in order that he may be a witness for the prosecution; and such order operates as an acquittal of such defendant.

§ 640. *Same, to be witness for co-defendants.*—When two or more defendants are jointly indicted, the court may direct a verdict of acquittal to be entered in favor of any one of them, against whom there is not, in the opinion of the

court, evidence sufficient to put him on his defense; and being acquitted, he may be a witness.

§ 641. *Conviction on testimony of accomplice.*—A conviction of felony cannot be had on the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the commission of the offense; and such corroborative evidence, if it merely shows the commission of the offense, or the circumstances thereof, is not sufficient.

§ 642. *Proof of rape, or crime against nature.*—To sustain an indictment for rape, or for the crime against nature, proof of actual penetration is sufficient, when the act is shown to have been committed forcibly, and against the consent of the person on whom the offense was committed.

§ 643. *Proof of intent to injure or defraud.*—When an intent to injure, defraud, or cheat is necessary to be shown, in order to constitute the offense, it is sufficient if such intent be to injure, defraud, or cheat the United States, this State, or any other State, or any public officer thereof, or any county, city, town, corporation, body politic, or private individual.

§ 644. *Proof of intent, means, &c.*—Where the intent with which, the mode in, or the means by which an act is done, are essential to the commission of the offense, and such offense may be committed with different intents, in different modes, or by different means, if the jury are satisfied that the act was committed with one of the intents, in one of the modes, or by either of the means charged, it is sufficient; and they must convict, although uncertain as to which of the intents charged existed, or in which mode, or by which of the means charged, such act was committed.

§ 645. *Proof as to results of act, &c.*—Where an act done may be attended by more results than one, either of which is sufficient to constitute the offense, the jury must convict, if satisfied that any one of the results charged was produced by the act, although uncertain as to which.

§ 646. *Evidence of abusive words on trial of assault, &c.* On the trial of any person under an indictment for an assault, an assault and battery, or an affray, he may give in evidence any opprobrious words, or abusive language, used by the person assaulted or beaten at or near the time of the

assault or affray; and such evidence shall be good in extenuation or justification, as the jury may determine.

§ 647. *Conviction of less offense than charged.*—Where the indictment charges an offense of which there are different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto, or of an attempt to commit the offense charged; and the defendant may also be found guilty of any offense which is necessarily included in that with which he is charged, whether it be a felony or a misdemeanor.

§ 648. *Examination of juror as witness.*—If a juror has personal knowledge respecting any fact in controversy, he should declare it in open court during the trial; and if, during the retirement of the jury, a juror declares a fact, as of his own knowledge, which could be evidence in the cause, the jury must forthwith return into court; and such juror must, in either case, be sworn and examined as a witness in the presence of the parties.

§ 649. *Discharge of sick juror before retirement.*—If, before the jury retire, one of them becomes so sick as to incapacitate him for the performance of his duty, or any other cause renders it necessary, in the opinion of the court, to discharge a juror, such juror may be discharged, another summoned in his place, and the trial commenced anew.

§ 650. *Discharge of jury on account of sickness, &c. after retirement.*—If, after the jury retire, one of them becomes so sick as to prevent the discharge of his duty, or any other cause or accident occurs to prevent their being kept together for deliberation, they may be discharged.

§ 651. *Discharge by adjournment.*—A final adjournment of the court discharges the jury.

§ 652. *Verdict and judgment as to several of joint defendants.*—Where several persons are indicted and tried jointly, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they agree, on which a judgment must be entered accordingly; and the case as to the other defendants may be tried by another jury.

§ 653. *Polling jury.*—When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party; in which case, they must be severally asked if it is their verdict; and if any answer in the negative, the jury must be sent out for further deliberation.

ARTICLE VI.

Removal of trial.

Section 654. Trial removed on defendant's application, &c.
" 655. Removed to nearest county, and but once.
" 656. Consent to depositions, and payment of mileage to clerk.
" 657. Transcript certified by clerk, and subpœnas forwarded.
" 658. Subpœnas issued by whom.
" 659. Trial had on transcript; *certiorari* ordered when necessary.
" 660. Fines and forfeitures, fees of jurors and witnesses, not affected by removal.

§ 654. *Trial removed on defendant's application, &c.*—Any person, charged with an indictable offense, may have his trial removed to another county, on making application to the court, setting forth specifically the reason why he cannot have a fair and impartial trial in the county in which the indictment is found; which application must be sworn to by him, and must be made as early as practicable before the trial, or may be made after conviction, on a new trial being granted.

§ 655. *Removed to nearest county and but once.*—The trial must be removed to the nearest county free from exception, and can be removed but once.

§ 656. *Consent to depositions, and payment of mileage to clerk.*—When the defendant is charged with a misdemeanor, an order for the removal of his trial must not be made, unless he consents of record that the witnesses for prosecution may be examined on interrogatories, on such terms as the court may prescribe; and he must also, at the time the order is made, pay the clerk five cents for each mile to and from the court-house of the county to which the trial is removed.

§ 657. *Transcript certified by clerk, and subpœnas forwarded.*—When an order for the removal of the trial is made, the clerk must make out a transcript of all the entries, orders, and proceedings in the case, including the organization of the grand jury, the indictment, the endorsements thereon, all the entries relating thereto, the undertakings or recognizances of the defendant, all the orders and judgments thereon, and the order for the removal of the trial; must attach his certificate thereto, and forward the package, under seal, by a special messenger, or deliver

it in person to the clerk of the court to which the trial is ordered to be removed; and he must also inclose in the package, and forward or deliver in the same manner, the original subpœnas in the case.

§ 658. *Subpœnas issued by whom.*—At any time before the delivery of the transcript to the clerk of the court to which the trial is removed, subpœnas for witnesses must be issued, on the application of either the defendant or the solicitor, by the clerk of the court in which the indictment was found, commanding such witnesses to appear at the court to which the trial is removed; which subpœnas must be executed by the sheriff, and returned to the clerk of the latter court; and said clerk must, after the delivery of the transcript to him, issue the subpœnas for witnesses.

§ 659. *Trial had on transcript;* certiorari *ordered when necessary.*—The defendant must be tried, in the court to which the case is removed, on the copy of the indictment thus certified; and said court may, if necessary, on a proper showing, order the clerk of the court in which the indictment was found to correct any mistake in the transcript, or to certify any portion of the record which he may have omitted.

§ 660. *Fines and forfeitures, fees of jurors and witnesses, not affected by removal.*— All fines and forfeitures, in such cases, go to the county in which the indictment was found, and judgment must rendered accordingly; and the fees of all jurors and witnesses, on being properly certified by the clerk of the court to which the trial is removed, are a charge on the county in which the indictment was found, in like manner as if the trial had not been removed.

CHAPTER IX.

WITNESSES, AND DEPOSITIONS.

Section 661. Subpœna not issued before arrest or bail.
" 662. Subpœnas for defendant's witnesses issued by clerk.
" 663. Same, for State witnesses.
" 664. Solicitor may issue subpœnas.
" 665. Served as in civil cases; privilege of witness.
" 666 Witness to attend on Wednesday, or second Monday.
" 667. Summoned but once, except on reversal of judgment.

" 668. Fees same as in civil cases; when taxed against defendant or prosecutor.
" 669. When paid by county.
" 670. Witness certificate, and how payable.
" 671. How many witnesses allowed.
" 672. Penalty against defaulting witness; judgment *nisi*.
" 673. Same; judgment absolute.
" 674. Two returns 'not found' equivalent to personal service.
" 675. Depositions; when taken by defendant.
" 676. Same; affidavit, interrogatories, &c.
" 677. Same; when taken by State.
" 678. Same; taken as in civil cases, but not read if witness is able to attend, &c.
" 679. Competency of witness as affected by interest.
" 680. Competency of freedmen &c. as witnesses.

§ 661. *Subpœna not issued before arrest or bail.*—No subpœna must be issued in a criminal case, unless the defendant is in custody, or has given bail to answer the charge.

§ 662. *Subpœnas for defendant's witnesses issued by clerk.* If the defendant is in custody, or has given bail to answer the charge, it is the duty of the clerk of the court in which the prosecution is pending, on his application, to issue subpœnas for such witnesses as he requires, as well during the sitting of the court as in vacation.

§ 663. *Same, for State witnesses.*—The clerk must also issue subpœnas for all witnesses on the part of the State, whose names are so marked on the indictment, if any, and for such other witnesses as the solicitor may direct him to summon.

§ 664. *Solicitor may issue subpœnas.*—The solicitor also has authority to issue subpœnas for witnesses on the part of the State, to appear either before the grand jury, or before any court in his circuit.

§ 665. *Served as in civil cases; privilege of witness.*—Subpœnas in criminal cases are served as in civil cases, and the witnesses summoned are privileged from arrest, as in civil cases.

§ 666. *Witnesses to attend on Wednesday, or second Monday.*—Where the term of the court is by law limited to one week, witnesses must be summoned to attend on Wednesday of that week; and where the term is longer than one week, they must be summoned to attend on Monday of the second week; and the criminal docket must, in each case, be taken up on the day on which the witnesses are summoned to attend.

§ 667. *Summoned but once, except on reversal of judgment.* Witnesses summoned by subpœna are bound to attend, from term to term, until the case is disposed of; but, if a judgment is rendered in the case, which is reversed by the supreme court, new subpœnas must be issued for the State witnesses, and also for the defendant's witnesses on his application.

§ 668. *Fees same as in civil cases; when taxed against defendant or prosecutor.*—Witnesses summoned on the part of the State, to appear either before the grand jury, or before any court in which a criminal prosecution is pending, are entitled to the same fees for their attendance as in civil cases; which fees are to be taxed against the defendant, if he is convicted; or against the prosecutor, when the costs are imposed on him.

§ 669. *When paid by county.*—If the defendant is not convicted, and the costs are not imposed on the prosecutor; or, if the costs are imposed on either the defendant or the prosecutor, and an execution against him for the same is returned 'no property found;' or, if no indictment is found by the grand jury before whom the witnesses appear;—in each of these cases, the fees of witnesses on the part of the State, appearing either before the grand jury or before the court, must be paid by the county, in the manner specified in the next section.

§ 670. *Witness certificate, and how payable.*—It is the duty of the clerk of the court to issue a certificate to each witness appearing on the part of the State, stating therein the amount of compensation to which he is entitled, and the facts which, under the provisions of the last preceding section, make it a good claim against the county; which certificate is receivable in payment of any debt due to the county for fines and forfeitures, and payable by the treasurer out of any fines and forfeitures in the county treasury.

§ 671. *How many witnesses allowed.*—In taxing the costs against either the defendant or the prosecutor, under section 668, not more than two witnesses, who were summoned or examined to prove the same fact, shall be allowed; unless such witnesses were summoned or examined to assail or defend the reputation of a witness for veracity, or the character of the defendant when put in issue; or unless the court, on a motion to re-tax as in civil cases, should

determine that the facts of the case justified the summoning or examining of a great number of witnesses.

§ 672. *Penalty against defaulting witness; judgment* nisi. Any witness who is duly summoned in a criminal case, and who fails to appear as commanded, forfeits one hundred dollars to the party at whose instance he was summoned; for which a conditional judgment must be rendered against him.

§ 673. *Same; judgment absolute.*—When a conditional judgment has been rendered against a defaulting witness in a criminal case, if he does not appear at the same term, and show a sufficient excuse for his default, a notice must be issued by the clerk of the court, notifying him of the rendition of such conditional judgment, and that the same will be made absolute at the next term of the court, unless he appears, and shows sufficient excuse for his default; which notice must be served by the sheriff, and returned three days before the next term of the court; and if he fails to appear as required, or fails to show a sufficient excuse for his default, to be determined by the court, the judgment must be made absolute against him.

§ 674. *Two returns 'not found' equivalent to personal service.*—If two notices of the rendition of such conditional judgment are returned 'not found' by the proper officer, such returns are equivalent to personal service, and the judgment may be made absolute thereon.

§ 675. *Depositions; when taken by defendant.*—The defendant may take the deposition of any witness, who, from age, infirmity, or sickness, is unable to attend court; or who resides out of the State, or more than one hundred miles from the place of trial, computing by the route usually travelled; or who is absent from the State; or where the defense, or a material part thereof, depends exclusively on the testimony of the witness.

§ 676. *Same; affidavit, interrogatories, &c.*—When the defendant desires to take the deposition of any witness under the provisions of the last preceding section, he must make affidavit before the clerk of the court in which the prosecution is pending, or before some justice of the peace, setting forth some one or more of the above causes for taking the deposition, and that the testimony of the witness is material, and must file with the clerk interrogato-

ries to be propounded to the witness; a copy of which interrogatories must be served on the prosecutor, or on the solicitor of the circuit, if either of them is in the county; and such prosecutor or solicitor may, within ten days thereafter, file cross-interrogatories, to which the defendant may, within a like period of ten days, file rebutting interrogatories; at the expiration of which time, or, if no cross-interrogatories are filed, at the expiration of ten days from the filing of the interrogatories in chief, the clerk must issue a commission, accompanied with a copy of all the interrogatories filed, and the deposition must be taken at such time and place as the commissioner may appoint.

§ 677. *Same; when taken by State.*—The deposition of any witness on the part of the State may be taken in like manner, and for similar causes, where the defendant files his written consent thereto.

§ 678. *Same; taken as in civil cases, but not read if witness is able to attend, &c.*—Depositions taken under the provisions of the last three sections are governed by the same rules which are applicable to depositions taken in civil cases, as specified in sections 2322, 2323, 2324, 2325, 2326, 2327, 2328, and 2329 of the Code of Alabama; and no such deposition can be read in evidence on the trial, if it appears that the witness is alive, and able to attend court, and within its jurisdiction.

§ 679. *Competency of witness as affected by interest.*—No person is competent to testify as a witness in any criminal case, because he is the person injured or defrauded, or intended to be injured or defrauded; nor because he is bail for the defendant, or may be liable to pay the costs; nor because he would be entitled to any reward on the conviction of the defendant; but, where the fine assessed, or any part thereof, is by law given to the injured party, and he becomes a witness for the prosecution, judgment for the fine must, on conviction, be rendered in favor of the State, for the use of the county in which the prosecution was commenced.

§ 680. *Competency of freedmen &c., as witnesses.*—Freedmen, free negroes, and mulattoes, are competent witnesses in any criminal case, where the defendant is a freedman, free negro, or mulatto, or where the prosecution is for an injury to the person or property of a freedman, free negro,

or mulatto; but they can only testify as witnesses in open court; and whenever a freedman, free negro, or mulatto, is a witness against a white person, or a white person is a witness against a freedman, free negro, or mulatto, the parties are competent witnesses, and may testify in open court, and are not disqualified by any interest in the question or suit, or by marriage.

CHAPTER X.

BAIL.

Section 681. Admission to bail defined.
" 682. Taking of bail defined.
" 683. Bail not allowed, when.
" 684 When matter of right.
" 685. When allowed in capital cases.
" 686. Same; dismissal of indictment.
" 687. Bail in open court; form of entry.
" 688. Bail not in open court; form and requisites of.
" 689. When probate judge may take bail.
" 690. Bail for felonies fixed by circuit judge, &c., and taken by sheriff.
" 691. Only one application allowed; exceptions reserved, and taken to supreme court.
" 692. Amount of bail fixed by supreme court, and taken by judge or sheriff.
" 693. Effect of undertaking.
" 694. Same; forfeiture.
" 695. Lunatics, married women, and infants.
" 696. Qualifications of bail.
" 697. Bail required to justify when doubtful.
" 698. Bail not discharged by irregularities.
" 699. Bail discharged by surrender of principal.
" 700. Surrender to sheriff; discharge on new bail.
" 701. Undertakings returned to court.
" 702. New undertaking required by court.
" 703. Forfeiture of undertaking; judgment *nisi*.
" 704. Notice of judgment *nisi*.
" 705. Service and return of notice.
" 706. *Alias* notice; two returns 'not found' equivalent to personal service.
" 707. Judgment set aside, reduced, or made absolute.
" 708. Excuses for default heard at any time, and allowed without costs.

§ 681. *Admission to bail defined.*—Admission to bail is the order of a competent court, magistrate, or officer, that the defendant be discharged from actual custody on bail.

§ 682. *Taking of bail defined.*—The taking of bail consists in the acceptance by a competent court, magistrate, or officer, of sufficient bail for the appearance of the defendant according to the legal effect of his undertaking, or for the payment to the State of a certain specified sum if he does not appear.

§ 683. *Bail not allowed, when.*—A defendant cannot be admitted to bail, where he is charged with an offense which may be punished by death, if the court or magistrate is of opinion, on the evidence adduced, that he is guilty of the offense in the degree punished capitally; nor where he is charged with a personal injury on another which is likely to produce death, and which was committed under such circumstances as would constitute murder in the first degree if death should ensue.

§ 684. *When matter of right.*—In all other cases than those above specified, the defendant is, before conviction, entitled to bail as a matter of right.

§ 685. *When allowed in capital cases.*—In cases punished capitally, the defendant is entitled to bail as a matter of right, when the State, after the finding of the indictment, has continued the case twice without his consent, for the testimony of absent witnesses.

§ 686. *Same; dismissal of indictment.*—In such case, if the indictment is dismissed, the defendant, on application for bail, is entitled to the benefit of any continuance had upon such indictment by the State for absent witnesses; and if another indictment is not found at the same court at which the former is dismissed, the order of dismissal is to be taken as a continuance by the State for absent witnesses.

§ 687. *Bail in open court; form of entry.*—When bail is taken in open court, it must be entered on the minutes, and may be as follows:

"The State } Came into court the said A. B., and also
vs. } C. D. and E. F., and agreed to pay the State
A. B. } of Alabama —— dollars," (specifying the sum prescribed by the court,) "unless the said A. B. appears at the present term of this court, and from term to term thereafter until discharged by law, to answer a criminal prosecution for an assault and battery," (or other offense, as the case may be.)

§ 688. *Bail not in open court; form and requisites of.*—When not taken in open court, the undertaking of bail must be in writing, signed by the defendant and at least two sufficient sureties, and approved by the magistrate or officer taking the same; and may be substantially in the following form:

"The State of Alabama, }
——— County. } We, A. B., C. D., and E. F., agree to pay to the State of Alabama —— dollars," (the sum prescribed by the magistrate or officer,) "unless the said A. B. appears at the next term of the —— court of —— county, and from term to term thereafter until discharged by law, to answer a criminal prosecution for the offense of ——," specifying the particular offense with which he is charged.

(Signed.) "A. B.
"C. D.
"E. F.

"Approved,
"G. H., judge," &c.

§ 689. *When probate judge may take bail.*—Except for murder in the second degree, manslaughter in the first degree, and all felonies which may be punished by death, or by imprisonment in the penitentiary for life, probate judges have the same authority to admit to bail that is by law conferred on chancellors and circuit judges.

§ 690. *Bail for felonies fixed by circuit judge, &c., and taken by sheriff.*—Circuit and city judges may, during term time, by order entered on the minutes, fix the amount of bail required in all cases of bailable felonies pending in the court, and direct the sheriff to take bail accordingly in vacation; and in like manner, when an application for bail is made to any judge or chancellor in vacation, such judge or chancellor may fix the amount of bail required, and authorize the sheriff to take bail accordingly.

§ 691. *Only one application allowed; exceptions reserved, and taken to supreme court.*—When an application for bail is made to a chancellor, or to any circuit or city court in term time, or to any circuit judge, city judge, or judge of probate in vacation, and is refused, no subsequent application can be made; but the evidence in such case may be set out on exceptions, and application made thereon to the supreme court.

§ 692. *Amount of bail fixed by supreme court, and taken by judge or sheriff.*—When an order is made by the supreme court, admitting a defendant to bail, the order must fix the amount of bail required, and direct the same to taken by the chancellor or judge to whom the primary application was made, or by the sheriff of the county in which the defendant is confined; and when such bail is ordered to be taken by a chancellor or judge, the sheriff having the custody of the defendant must carry him before such chancellor or judge for that purpose.

§ 693. *Effect of undertaking.*—The undertaking of bail binds the parties thereto, jointly and severally, for the appearance of the defendant on the first day of the court, from day to day of such term, and from day to day of each term thereafter, until he is discharged by law; and if the trial is removed to another county, for the appearance of the defendant from day to day of each term of the court to which it is removed, until discharged by law.

§ 694. *Same; forfeiture.*—The essence of all undertakings of bail, whether upon a warrant, writ of arrest, suspension of judgment, writ of error, or in any other case, is the appearance of the defendant at court; and the undertaking is forfeited by the failure of the defendant to appear, although the offense, judgment, or other matter, is incorrectly described in such undertaking; the particular case, or matter, to which the undertaking is applicable, being made to appear to the court.

§ 695. *Lunatics, married women, and infants.*—It is not necessary that lunatics, married women, or infants, should themselves execute or acknowledge the undertaking of bail; but any other person may enter into an undertaking for their appearance.

§ 696. *Qualifications of bail.*—The qualifications of bail are, that each must be a resident of this State, and a householder and freeholder therein; and that each must be worth, exclusive of property exempt from execution, the amount expressed in the undertaking; but the court, magistrate, or officer, in taking bail, may allow more than two persons to justify severally as bail, in amounts less than that expressed in the undertaking, provided the whole be equivalent to two sufficient bail.

§ 697. *Bail required to justify when doubtful.*—Where

there is a reasonable doubt as to the sufficiency of the bail, they may be required by the court, magistrate, or officer, to answer fully, on oath, as to their qualifications.

§ 698. *Bail not discharged by irregularities.*—No bail are discharged by reason of the want of any of the qualifications required in this chapter; or by reason of there not being the requisite number of bail; or by reason of any other agreement than is expressed in the undertaking; or by reason of the infancy, coverture, lunacy, or any other incapacity of any of the other parties thereto; or because the defendant has not joined in the same.

§ 699. *Bail discharged by surrender of principal.*—Bail may, at any time before they are finally discharged, exonerate themselves by surrendering the defendant; and for that purpose, they may arrest the defendant, on a certified copy of the undertaking, at any place in the State, or may authorize another person to arrest him by an endorsement in writing on such copy.

§ 700. *Surrender to sheriff; discharge on new bail.*—To exonerate the bail, the surrender of the defendant must be made to the sheriff of the county in which the court is held to which the defendant is bound to appear, or to which the trial has been removed; and if the charge is for a misdemeanor, the sheriff may discharge him on his giving new bail; otherwise, must keep him in jail until discharged by law.

§ 701. *Undertakings returned to court.*—All undertakings of bail must be returned by the magistrate or officer by whom taken, to the clerk of the court before which the defendant is bound to appear, within the same time, and in the same manner, as is provided by section 611 for the return of writs of arrest.

§ 702. *New undertaking required by court.*—The court before which any defendant is bound to appear, may require him to enter into a new undertaking, when it appears to said court that the original undertaking was insufficient when entered into, or has since become insufficient from any cause whatever.

§ 703. *Forfeiture of undertaking; judgment* nisi.—Whenever an undertaking of bail is forfeited, by the failure of the defendant to appear as required, a conditional judg-

ment must be rendered by the court, in favor of the State, for the use of the proper county, against the parties to the undertaking, for the sum therein expressed; which judgment may be substantially as follows:

"The State } vs. A. B. } Indictment for assault and battery, (or other offense, as the case may be.)

It appearing to the court that the said A. B., together with C. D. and E. F., agreed to pay the State of Alabama —— dollars," (the sum specified in the undertaking.) "unless the said A. B. appeared at this term of the court to answer in this case; and the said A. B. having failed to appear, it is therefore ordered, that the State of Alabama, for the use of —— county, recover of the said A. B., C D., and E. F., on said undertaking, the sum of —— dollars," (the sum specified in the undertaking,) "unless they appear at the next term of this court, and show cause why this judgment shou d not be made absolute."

§ 704. *Notice of judgment nisi.*—A notice of the rendition of such judgment must be issued by the clerk to each defendant, which notice may be in the following form:

"The State of Alabama, } To A. B., C. D., and E. F.: —— County. } You are hereby notified, that at the —— term, 186—, of the —— court of said county, a judgment was rendered against you, of which the following is a copy," (setting out the conditional judgment.) "and that the said judgment will be made absolute against you at the next term of said court, unless you then appear and show cause against the same."

§ 705. *Service, and return of notice.*—The notice may be executed by the sheriff of any county in the State, and must be returned by the officer executing it, with his proper return thereon endorsed, by the first day of the next term of the court from which it issued.

§ 706. Alias *notice; two returns 'not found' are equivalent to personal service.*—If the notice is not served on any of the parties to the undertaking, such other notices as are necessary may, from time to time, be issued; but two returns of 'not found,' by the proper officer, are equivalent to personal service.

§ 707. *Judgment set aside, reduced, or made absolute.*—If the defendants appear, and show sufficient cause for the

default, to be determined by the court, the conditional judgment must be set aside; but, if the excuse is not sufficient, or if they fail to appear, the judgment must be made absolute, for the entire sum expressed in the undertaking, or any portion thereof, according to the circumstances.

§ 708. *Excuses for default heard at any time, and allowed without costs.*—Excuses for defaults must be heard by the court, on application, at any time when not engaged in other business; and when a conditional judgment is set aside, no costs must be imposed on the defendants.

CHAPTER XI.

HABEAS CORPUS.

Section 709. Who entitled to writ.
" 710. Application made by petition on oath.
" 711. What petition must state.
" 712. If name unknown, description sufficient.
" 713. To whom addressed.
" 714. Same; absence of nearest judge, &c.
" 715. Writ granted without delay; returnable before whom.
" 716. Form of writ.
" 717. Not disobeyed for want of form or mistake.
" 718. Notice to adverse party in civil case.
" 719. Notice to solicitor or prosecutor in criminal case.
" 720. Precept to sheriff or constable.
" 721. Subpœnas for witnesses.
" 722. Service of writ; by whom made, and how.
" 723. Return; made when.
" 724. Same; form, and contents.
" 725. Body also produced, with warrant, &c.
" 726. When not produced, on account of sickness, &c.
" 727. When produced under precept, same as on return to writ.
" 728. Denial of return; examination, adjournment, &c.
" 729. Forfeiture of undertaking of bail pending examination.
" 730. When party discharged; when remanded.
" 731. When bailed, and how.
" 732. Excessive bail in civil case reduced.
" 733. Undertaking of bail returned to court; forfeiture thereof.
" 734. Judgment &c., or commitment for contempt, not inquired into.
" 735. When discharged, if under legal process.
" 736. When remanded or committed for public offense.
" 737. After discharge, not again arrested.
" 738. Penalty for re-arrest or refusal to discharge.
" 739. Penalty for refusal to give copy of warrant, &c.
" 740. Penalty for refusal to obey writ.
" 741. Attachment against person refusing.

Title 3. Proceedings in criminal cases.

" 742. Penalty for eluding writ.
" 743. Penalty on defaulting witness.
" 744. Attendance of witness; how proved and taxed.
" 745. Costs discretionary; how taxed and collected.
" 746. Fees of officers; how taxed and collected.
" 747. Costs before probate judge; how taxed, &c.
" 748. Execution for costs; returnable when.
" 749. Guards summoned when necessary.
" 750. Compensation of guards; penalties, &c.

§ 709. *Who entitled to writ.*—Any person who is imprisoned or restrained of his liberty in this State, on any criminal charge or accusation, or under any other pretense whatsoever, (except persons committed or detained by virtue of process issued by a court of the United States, or by a judge thereof, in cases of which such courts have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts,) may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint.

§ 710. *Application made by petition on oath.*—The application for the writ must be made by petition, signed either by the party himself for whose benefit it is intended, or by some other person on his behalf; and must be verified by the oath of the applicant, to the effect that the statements therein contained are true, to the best of his knowledge, information, and belief.

§ 711. *What petition must state.*—The petition must state, in substance, the name of the person on whose behalf the application is made; that he is imprisoned or restrained of his liberty in the county; the place of such imprisonment, if known; the name of the officer or person by whom he is so imprisoned, and the cause or pretense of such imprisonment; and if the imprisonment is by virtue of any warrant, writ, or other process, a copy thereof must be annexed to the petition, or the petition must allege that a copy thereof has been demanded and refused, or must show some sufficient excuse for the failure to demand a copy.

§ 712. *If name unknown, description sufficient.*—If the name of the person on whose behalf the application is made, or of the officer or person by whom he is imprisoned or detained, is uncertain or unknown, he may be described in any way that is sufficient to identify him.

§ 713. *To whom addressed.*—Where the person is confined in the county jail, penitentiary, or any other place, on a charge of felony, or under a commitment for felony, or under a sentence, judgment, decree, or order, of the supreme court, the chancery court, the circuit court, or the city court, the petition must be addressed to the judge of the city court, or to the nearest circuit judge or chancellor; in all other cases, it may be addressed to any one of them, or to the probate judge of the county; and where the person is confined in any other place than the county jail or the penitentiary, and on any other than a criminal charge it may be addressed to any justice of the peace of the county, or to the probate judge thereof.

§ 714. *Same; absence of nearest judge, &c.*—Where the petition is required to be addressed to the nearest circuit judge or chancellor, and such judge or chancellor is absent, or has refused to grant the writ, or is incapable of acting, it may be addressed to any other circuit judge or chancellor; but, in such case, before the writ is granted, proof must be made, either by the oath of the applicant, or other sufficient evidence, of the particular facts which justify such address.

§ 715. *Writ granted without delay; returnable before whom.*—The judge, chancellor, or justice, to whom the application is made, must grant the same without delay, unless it appears from the petition itself, or from the documents thereunto annexed, that the person imprisoned or restrained is not, under the provisions of this chapter, entitled to the benefit of the writ. When the person is confined in the penitentiary, the writ must be made returnable before the circuit court of Coosa county; when granted by a justice of the peace, it must be made returnable before the judge of probate of the county, or the judge of the city court, or the nearest circuit judge or chancellor; and in all other cases, it must be made returnable before the officer by whom it is granted.

§ 716. *Form of writ.*—The writ may be, in substance, as follows:

"The State of Alabama, } To the sheriff of —— county"
——— County. } (or other person by whom the party is imprisoned or restrained): "You are hereby commanded to have the body of A. B., alleged to be detained

by you, by whatsoever name the said A. B. is called or charged, with the cause of such detention, before C. D., judge of the circuit court," (or other officer, as required by section 715,) "on ——, at ——," (specifying the time and place; or "immediately after the receipt of this writ," as the case may be,) "to do and receive what shall then and there be considered concerning the said A. B. Dated this —— day of ——, 186—."

(Signed by the officer, with his official title.)

§ 717. *Not disobeyed for want of form or mistake.*—The writ must not be disobeyed on account of any want of form, or any misdescription of the person to whom it is addressed; and it must be presumed to have been addressed to the person on whom it is served, notwithstanding any mistake in the name or address.

§ 718. *Notice to adverse party in civil case.*—If it appears from the petition, or from the documents thereunto annexed, that the party is imprisoned or detained by virtue of any process under which any other person has an interest in continuing his imprisonment or restraint, the officer issuing the writ must endorse thereon an order, requiring the applicant, or some one else for him, to give notice to such person, or to his attorney, of the issue of the writ, and of the time and place at which it is returnable, in order that he may, if he thinks proper, appear and object to the discharge of the party who is imprisoned; and if such notice is not given, when the party who is entitled to it is within fifty miles of the place of examination, the party who is imprisoned must not be discharged.

§ 719. *Notice to solicitor or prosecutor in criminal case.*—If it appears from the petition, or from the documents thereunto annexed, that the party is imprisoned or detained on any criminal charge or accusation, the officer issuing the writ must endorse thereon an order, requiring the applicant, or some one else for him, to give notice to the solicitor of the circuit, or to the prosecutor, or principal agent in procuring the arrest, of the issue of the writ, and of the time and place at which it is returnable; and if such notice is not given, when the solicitor, or other person entitled to it, is within fifty miles of the place of examination, the party who is imprisoned must not be discharged. But, if the party is charged with an offense which is bailable, and

he waives an examination into the facts, the judge may fix the amount of bail, without notice to the solicitor or prosecutor; and, in so doing, must act on the presumption that the offense is of the highest grade.

§ 720. *Precept to sheriff or constable.*—At the time of issuing the writ, or at any time afterwards before the hearing, the officer issuing the writ must, on a proper showing, issue a precept, directed to any sheriff or constable of the State, commanding him to have the body of the person who is imprisoned or restrained, before the officer before whom the writ is returnable, at the time and place at which it is returnable; which precept must be executed by any sheriff or constable into whose hands it may come, according to its mandate.

§ 721. *Subpœnas for witnesses.*—Subpœnas for witnesses must be issued, at any time before the hearing, on the application of either party, by the clerk of the circuit or city court of the county to which the writ is returnable, or by the probate judge by whom the writ was issued, or by any justice of the peace of the county in which the witness resides; which subpœnas must be directed to the sheriff, or to any constable of the county in which the witness resides, and must be executed and returned as in other cases.

§ 722. *Service of writ; by whom made, and how.*— The writ must be served by the sheriff, deputy sheriff, or some constable, of the county in which it is issued, or in which the person on whose behalf it is sued out is imprisoned or detained, by delivering a copy to the person to whom it is directed, and showing the original if demanded; and if such person cannot be found, or conceals himself, or refuses admittance to the officer, it may be served by leaving a copy at the place where the party is confined, with any person of full age who, for the time being, has charge of the party, or by posting it in a conspicuous place on the outside of the house or building in which the party is confined.

§ 723. *Return; made when.*—The person to whom the writ is directed, after due service thereof, must make his return, if practicable, at the day therein specified; and if no day is therein specified, and the place to which the return is to be made is not more than thirty miles from the place where the party is imprisoned or detained, the return must be made within two days after service; if more than

thirty, and less than one hundred miles, within five days; and if over one hundred miles, within eight days after service.

§ 724. *Same; form, and contents.*—The return must be signed by the person making it, and be verified by his oath, unless he is a sworn public officer, and makes the return in his official capacity; and it must state, plainly and unequivocally, whether or not he has the party in his custody or power, or under his restraint; if so, by what authority, and the cause thereof, setting out the same fully, together with a copy of the writ, warrant, or other written authority, if any; and if he has had the party in his custody or power, or under his restraint, at any time before or after the date of the writ, but has transferred such custody or restraint to another, to whom, at what time, for what cause, and by what authority, such transfer was made.

§ 725. *Body also produced, with warrant, &c.*—At the time of making the return, he must also produce the person on whose behalf the writ was sued out, according to the command of the writ, and the original warrant, writ, or other written authority, under which he was detained; but if, from sickness, or infirmity, the party cannot be produced without danger, that fact must be stated in the return, and verified by oath, and, if required, established by other sufficient evidence.

§ 726. *When not produced, on account of sickness, &c.*—When the party on whose behalf the writ is sued out, on account of sickness or infirmity is not produced, the court, chancellor, or judge, before whom the writ is returnable, if satisfied of such sickness or infirmity, may proceed to decide on the return as if the party had been produced; or may proceed to the place where he is imprisoned or detained, and there make the examination; or may adjourn the examination to another time.

§ 727. *When produced under precept, same as on return to writ.*—If the party is brought before the court, judge, or chancellor, by virtue of a precept issued under the provisions of section 720, the case must be heard and determined as if he had been produced in return to the writ.

§ 728. *Denial of return; examination, adjournment, &c.* The party on whose behalf the writ is sued out, may deny any of the facts stated in the return, and allege any other

facts which may be material in the case; and the court, chancellor, or judge, may examine in a summary way into the cause of the imprisonment or detention, and hear the evidence adduced; may adjourn the examination from time to time, as the circumstances of the case may require, and in the mean time remand the party, or commit him to the custody of the sheriff of the county, or place him under such other custody as his age or other circumstances may require, or, if the character of the charge authorize it, take bail from him, in a sufficient amount, for his appearance from day to day until judgment is given.

§ 729. *Forfeiture of undertaking of bail pending examination.*—If the party fails to appear, as required by his undertaking, an entry of forfeiture must be endorsed thereon, signed by the judge or chancellor, and returned to the circuit or city court of the county in which the examination is had; and the same proceedings must be thereon had in said court as if the undertaking had been taken in said court, the endorsement of forfeiture being presumptive evidence of that fact.

§ 730. *When party discharged; when remanded.*—If no legal cause for the imprisonment or restraint of the party is shown, he must be discharged; but, if it appears that he is held or detained in custody by virtue of process issued by a court or judge of the United States, in a case of which such court or judge has exclusive jurisdiction, or by virtue of any legal engagement or enlistment in the army or navy of the United States, or, being subject to the rules and articles of war, is confined by any one legally acting by authority thereof, or is in custody for any public offense committed in any other State or territory, for which, by the constitution and laws of the United States, he should be delivered up to the authority of such State or territory, or that he is otherwise legally detained, he must be remanded.

§ 731. *When bailed, and how.*—If it appears that he is charged with a public offense which is bailable, he must be admitted to bail, on offering sufficient bail; and if sufficient bail is not offered, the amount of bail required must be endorsed on the warrant, and the court to which he is required to appear, and he may be afterwards discharged by the sheriff of the county on giving sufficient bail in the amount so required.

§ 732. *Excessive bail in civil case reduced.*—If it appears that he was committed for want of bail in a civil action, and that the sum required is excessive and unreasonable, the judge or chancellor must decide what bail is reasonable; and on giving sufficient bail in the sum prescribed, either before the judge or chancellor, or afterwards to the sheriff of the county, he must be discharged.

§ 733. *Undertaking of bail returned to court; forfeiture thereof.*—All undertakings of bail, taken by any judge, chancellor, or sheriff, under the provisions of the last two sections, must be transmitted by him to the clerk of the court before which the party is bound to appear, by the first day of the next succeeding term; and may be forfeited, and the same proceedings thereon had, as against other bail in criminal cases.

§ 734. *Judgment &c., or commitment for contempt, not inquired into.*—No court, chancellor, or judge, on the return of a writ of *habeas corpus*, has authority to inquire into the legality or justice of any order, judgment, decree or process of any court legally constituted, or into the justice or propriety of any commitment for contempt made by a court, officer, or body, according to law, and charged in such commitment.

§ 735. *When discharged, if under legal process.*—If it appears that the party is in custody by virtue of process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, he can only be discharged—1st, where the jurisdiction of such court has been exceeded, either as to matter, place, sum, or person; 2d, where, though the original imprisonment was unlawful, the party has become entitled to his discharge by reason of some subsequent act, omission, or event; 3d, where the process is void in consequence of some defect in matter or substance required by law; 4th, where the process, though in proper form, was issued in a case not allowed by law, or under circumstances not allowed by law; 5th, where the process is not authorized by any judgment, order, or decree, nor by any provision of the law; and 6th, where the person who has the custody of him under any order or process, is not the person authorized by law to detain him.

§ 736. *When remanded or committed for public offense.*—

If it appears that the party has been legally committed for any public offense, or that he is guilty of such an offense, although his commitment was irregular, he may be remanded to the custody or restraint from which he was taken, if the person under whose custody or restraint he was, is legally entitled thereto; and if not so entitled, he must be committed to the custody of the proper officer or person.

§ 737. *After discharge, not again arrested.*—When a person has once been discharged on *habeas corpus*, he cannot be again imprisoned, restrained, or kept in custody, for the same cause; unless he is indicted therefor, or, after a discharge for defect of proof, is again arrested on sufficient proof, and committed by legal process.

§ 738. *Penalty for re-arrest, or refusal to discharge.*—Any officer, or other person, who has the custody of a party produced on *habeas corpus*, and who detains him after an order of the court, chancellor, or judge, for his discharge or enlargement, or afterwards arrests him without a legal and proper cause, warrant, or other process, is guilty of a misdemeanor, and must, on conviction thereof, be fined not less than fifty, nor more than five hundred dollars; and is also responsible in a civil action for any damages the party may have sustained.

§ 739. *Penalty for refusal to give copy of warrant, &c.*—Any officer who refuses or neglects to deliver a true copy of the order, writ, warrant, or process, by virtue of which he detains any prisoner, either to the prisoner himself, or to any other person who applies for the same on his behalf, for six hours after demand made, forfeits to the prisoner two hundred dollars, and is also guilty of a misdemeanor, on conviction of which he must be fined, not less than fifty, nor more than five hundred dollars; but no officer is required to deliver more than two copies of such order, writ, warrant, or process.

§ 740. *Penalty for refusal to obey writ.*—Any person to whom a writ of *habeas corpus* is directed, and who refuses to receive the same, or neglects to obey and execute it according to the provisions of this chapter, (unless sufficient excuse is shown for such refusal or neglect,) is responsible in damages to the party aggrieved, and is guilty of a contempt, and also of a misdemeanor; and, on conviction

thereof, must be fined not less than fifty, nor more than five hundred dollars.

§ 741. *Attachment against person refusing.*—It is the duty of the officer before whom such writ is returnable, in case of such refusal or neglect on the part of the person to whom it is directed, to proceed forthwith against him, by process of attachment, as for contempt, to compel obedience to the writ, and to punish him for such contempt; and when such attachment is issued against the sheriff or his deputy, it may be directed to the coroner, or to any constable, and may be executed by such coroner or constable.

§ 742. *Penalty for eluding writ.*—Any person who has in his custody, or under his control, a person who is entitled to a writ of *habeas corpus*, and, either before or after the issue of such writ, with intent to elude the service or effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals him, or changes his place of confinement, forfeits to the party aggrieved the sum of five hundred dollars, and is also guilty of a misdemeanor; and, on conviction thereof, must be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, not exceeding twelve months.

§ 743. *Penalty on defaulting witness.*—If any witness, duly subpœnaed under the provisions of this chapter, fails to attend as required, the judge or chancellor before whom the writ is returnable must endorse such failure on the back of the subpœna, and deliver it to the clerk of the circuit court of the county in which the examination is had; and the same proceedings must be thereon had as against defaulting witnesses in that court, the endorsement being presumptive evidence of such default.

§ 744. *Attendance of witness; how proved and taxed.*—Witnesses may prove their attendance before the judge or chancellor as in other cases, and have the same taxed in the bill of costs, on the subsequent conviction of the party, where he is detained on a criminal charge.

§ 745. *Costs discretionary; how taxed and collected.*—In other cases, the court, judge, or chancellor, may impose the costs, or any portion thereof, on either party; and where the writ is returnable before a chancellor, or before a judge of the circuit or city court, the costs must be taxed

by the clerk of such circuit or city court, and collected by execution.

§ 746. *Fees of officers; how taxed and collected.*—The officer serving the writ is entitled to one dollar for such service, and to five cents for each mile in going and returning, to be proved by his own oath before the judge of probate or clerk; and for issuing and serving subpœnas the officers are entitled to the same fees as in other cases; which fees must be taxed in the bill of costs in the case provided for by section 744, and in other cases collected by execution issued by the judge of probate.

§ 747. *Costs before probate judge; how taxed, &c.*—Where the writ is returnable before the judge of probate, he must tax the costs, and may collect the same by execution, except in the case provided for by section 744.

§ 748. *Execution for costs; returnable when.*—An execution for costs, issued under the last three sections, may be made returnable at any day, not less than one month, nor more than three months from the date of its issue, except upon the conviction of a public offense.

§ 749. *Guards summoned when necessary.*—When the person on whose behalf the writ is sued out is charged with a public offense, the officer or person having charge of him may summon a sufficient guard to aid in conveying him before the court, judge, or chancellor, before whom the writ is returnable, and conveying him back again if he is not discharged.

§ 750. *Compensation of guards; penalties, &c.*—In the case provided for in the last preceding section, the officer and guards are entitled to the same compensation as for conveying convicts to the penitentiary, to be paid in the same manner; and persons summoned as guards are subject to the same penalties as if they had been summoned to assist in conveying a convict to the penitentiary.

CHAPTER XII.

APPEALS, AND WRITS OF ERROR.

Section 751. Question of law reserved by defendant, by bill of exceptions.

" 752. Transcript made out and forwarded by clerk.
" 753. In case of felony, judgment suspended, &c.
" 754. In case of misdemeanor, judgment suspended, or defendant bailed.
" 755. On forfeiture of undertaking, writ of arrest to issue, &c.
" 756. Proceedings on forfeited undertaking.
" 757. Writ of error awarded by supreme court or judge.
" 758. Transcript &c. made out by clerk.
" 759. Order entered on minutes; writ prosecuted to return term, &c.
" 760. Execution of sentence suspended, &c.
" 761. In case of misdemeanor, defendant bailed.
', 762. Proceedings on forfeiture of undertaking; writ of arrest, &c.
" 763. Assignment of error, or joinder, unnecessary.
" 764. Affirmance of judgment.
" 765. Reversal of judgment.

§ 751. *Question of law reserved by defendant, by bill of exceptions.*—Any question of law, arising in any of the proceedings in a criminal case tried in the circuit or city court, may be reserved by the defendant, but not by the State, for the consideration of the supreme court; and if the question does not distinctly appear on the record, it must be reserved by bill of exceptions, duly taken and signed by the presiding judge as in civil cases.

§ 752. *Transcript made out and forwarded by clerk.*—When any question of law is reserved for the consideration of the supreme court under the last preceding section, it is the duty of the clerk of the court in which the case was tried to make out a complete transcript of the record, attach his certificate thereto, and transmit it to the clerk of the supreme court by the first day of the next ensuing term.

§ 753. *In case of felony, judgment suspended, &c.*—Where such question is reserved in a case of felony, judgment must be rendered against the defendant; but the execution thereof must be suspended, for at least sixty days after the commencement of the next ensuing term of the supreme court.

§ 754. *In case of misdemeanor, judgment suspended, or defendant bailed.*—Where such question is reserved in a case of misdemeanor, judgment must be rendered on the conviction; but the execution thereof must be suspended until the next term of the court; or the defendant may give bail, with sufficient sureties, conditioned that he will appear at that term, and abide the judgment rendered.

§ 755. *On forfeiture of undertaking, writ of arrest to issue, &c.*—If the defendant fails to appear according to the undertaking, a writ of arrest must be issued; if not taken on such writ, another must be issued, and so on until the judgment has been executed; and if taken on any writ of arrest, he must be committed to jail, or may be admitted to bail by the sheriff, on giving sufficient bail for his appearance at the next term of the court to abide by the judgment rendered; but such bail must be at least in the same amount as the first undertaking, which amount must be endorsed by the clerk on the writ of arrest.

§ 756. *Proceedings on forfeited undertaking.*—When any undertaking of bail, under the provisions of the last section, is forfeited by the failure of the defendant to appear according to its terms, the same proceedings must be had thereon as on the forfeiture of other undertakings of bail in the circuit or city court.

§ 757. *Writ of error awarded by supreme court or judge.* A writ of error on any judgment rendered in a criminal case may issue on an order to that effect, by any one of the judges of the supreme court in vacation, or by the supreme court in term time, addressed to the clerk of the court in which the judgment was rendered; but such writ must only be granted on some error of law apparent on the transcript of the record.

§ 758. *Transcript &c. made out by clerk.*—On the filing of such order with the clerk of the court in which the judgment was rendered, such clerk must give the party filing it a certificate of the filing thereof; must make out a writ of error, and a transcript of the record and proceedings had in the cause; attach his certificate, and the writ of error, to such transcript, and deliver the same, on demand, to the party suing out the writ, or to his attorney.

§ 759. *Order entered on minutes; writ prosecuted to return term, &c.*—When a writ of error is awarded by a judge of the supreme court in vacation, such judge must cause an entry of such order to be made on the minutes of the court at its next term; and if any writ of error is not prosecuted to the term to which it is returnable, it must be dismissed, and no writ of error afterwards allowed.

§ 760. *Execution of sentence suspended, &c.*—If the defendant is in the custody of the sheriff, and the order allow-

ing the writ directs a stay of proceedings on the judgment, the sheriff must, on being served with the clerk's certificate that the order has been filed, and with a copy of the order, keep and detain the defendant in his custody, without executing the sentence which may have been passed on his conviction, to abide the judgment that may be rendered on the writ of error.

§ 761. *In case of misdemeanor, defendant bailed.*—If the conviction is for an offense which is punishable by fine, or by imprisonment in the county jail, or by hard labor for the county, the judge or court awarding the writ must also direct the clerk of the court in which the conviction was had to admit the defendant to bail, in a sum to be prescribed by such judge or court, with sufficient sureties, conditioned for his appearance at the next term of the court in which the conviction was had, to abide such judgment as may be rendered on the writ of error.

§ 762. *Proceedings on forfeiture of undertaking; writ of arrest.*—If the defendant fails to appear accord ng to the undertaking, a writ of arrest must be issued, and the same proceedings be thereon had as are prescribed by section 755; and the same proceedings must be had on the forfeited undertaking as on the forfeiture of other undertakings of bail in said court.

§ 763. *Assignment of error, or joinder, unnecessary.*—In cases taken to the supreme court under the provisions of this chapter, no assignment of errors, nor joinder in error, is necessary; but the court must render such judgment on the record as the law demands.

§ 764. *Affirmance of judgment.*—If the judgment is affirmed, the supreme court must direct the sentence to be execut d, and, if the day appointed for the execution of the sentence has passed, must specify a day for the execution of the sentence; and the judgment and sentence must be executed accordingly.

§ 765. *Reversal of judgment.*—If the judgment is reversed, the supreme court may order a new trial, or that the defendant be discharged, or that he be held in custody until discharged by due course of law, or make such other order as the case may require; and if the defendant is ordered to be discharged, no forfeiture can be taken on his undertaking of bail.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS, AND PARDONS.

Section 766. Governor's power to pardon, reprieve, &c.
" 767. Record of pardons &c. kept.
" 768. Commutation of sentence of death for murder, rape, &c., heretofore committed.
" 769. Commutation for other offenses heretofore committed.
" 770. Commutation for offenses hereafter committed.
" 771. Commutation of imprisonment in the penitentiary to hard labor.
" 772. Commuted sentence recorded and enforced.
" 773. Remission of imprisonment in penitentiary on recommendation of inspectors.
" 774. Deduction of time for good conduct.
" 775. Execution of sentence postponed to make application for pardon.
" 776. Statement of facts made by presiding judge, and filed in executive office.

§ 766. *Governor's power to pardon, reprieve, &c.*—In all cases except treason and impeachment, the governor has power, after conviction, and not otherwise, to grant reprieves, commutations, and pardons, and to remit fines and forfeitures.

§ 767. *Record of pardons &c. kept.*—He must cause to be entered, in a book kept for that purpose, his reasons for granting pardons, commuting punishments, and remitting fines and forfeitures; and must preserve on file all documents on which he acted.

§ 768. *Commutation of sentence of death for murder, rape, &c., heretofore committed.*—When punishment of death is imposed for the crime of murder, rape, robbery, burglary, or arson, heretofore committed, he may, with the consent of the defendant, commute such punishment by substituting for it imprisonment in the penitentiary, or sentence to hard labor for the county, for not less than five years.

§ 769. *Commutation for other offenses heretofore committed.*—When punishment of death is imposed for any offense heretofore committed, other than those specified in the last preceding section, he may, with the consent of the defendant, commute such punishment by substituting for it imprisonment in the penitentiary, or sentence to hard labor for the county, for not less than two years.

§ 770. *Commutation for offenses hereafter committed.*—When punishment of death is imposed for any offense hereafter committed, except murder, rape, robbery, burglary, or arson, he may, with the consent of the defendant, commute such punishment by substituting for it imprisonment in the penitentiary, or sentence to hard labor for the county, for not less than five years.

§ 771. *Commutation of imprisonment in penitentiary to hard labor.*—When sentence of imprisonment in the penitentiary is imposed for any offense hereafter committed, he may commute such punishment by substituting for it sentence to hard labor for the county for a term equal to the unexpired portion of the defendant's sentence.

§ 772. *Commuted sentence recorded and enforced.*—When any sentence is commuted under the provisions of the last four preceding sections, the governor must cause a statement of such commutation to be certified to the clerk of the court in which the conviction was had, who must enter the same of record at the next ensuing term, under the direction of the presiding judge; and such commuted sentence must be executed as if it had been rendered by said court.

§ 773. *Remission of imprisonment in penitentiary on recommendation of inspectors.*—The governor may, in his discretion, remit a part of the imprisonment of a convict in the penitentiary, on the written recommendation of the board of inspectors, to the effect that such convict has conducted himself in an unexceptionable manner during his imprisonment, and that the remission of the remainder thereof would not, in their opinion, be inconsistent with the public good; but no such remission must be granted on the recommendation of the inspectors alone, unless the convict has been imprisoned one-third of the term for which he was sentenced, or, when sentenced for life, or for more than twenty years, has served at least seven years.

§ 774. *Deduction of time for good conduct.*—If it appears from the reports of the board of inspectors, that the conduct of any convict in the penitentiary has been unexceptionable during the time of his imprisonment, the governor may order two months to be deducted from each year, dating from the commencement of his imprisonment; but, if the convict is at any time guilty of bad conduct, he

thereby loses the benefit of the previous year or years of unexceptionable conduct.

§ 775. *Execution of sentence postponed to make application for pardon.*—When any defendant is convicted, and sentenced to death, or to imprisonment in the penitentiary, the presiding judge, if he is of opinion that such defendant should be pardoned, may postpone the execution of the sentence, for such time as may appear necessary to obtain the action of the governor on an application for pardon.

§ 776. *Statement of facts made by presiding judge, and filed in executive office.*—When any defendant, on conviction, is sentenced to imprisonment in the penitentiary, or hard labor for the county, for the term of five years or more, it is the duty of the presiding judge to make a statement in writing, setting forth the name of the defendant, the term of the court at which he was tried, the offense of which he was convicted, the character of the evidence against him, the circumstances of aggravation or mitigation developed on the trial, and the proof in reference to his previous character; which statement must be signed by the judge, and must, within thirty days thereafter, be transmitted by the clerk to the governor, to be filed in the executive office.

CHAPTER XIV.

FEES AND ALLOWANCES.

Section 777. Fees in county court.
" 778. Same; how taxed and collected.
" 779. Same; to whom accruing
" 780. Same; judge's fees paid by county.
" 781. Prosecuting attorney's fees.
" 782. Justice's fees.
" 783. Same; how taxed and collected.
" 784. Constable's fees.
" 785. Same; how taxed and collected.
" 786. Circuit and city clerk's fees.
" 787. Same; how taxed and collected.
" 788. Sheriff's fees.
" 789. Same; how taxed and paid.
" 790. Coroner's fees.
" 791. Same; how taxed and paid.
" 792. Solicitor's fees.
" 793. Attorney-general's fees.
" 794. Regular juror's fees.
" 795. Tales jurors' fees.
" 796. Witnesses' fees.

§ 777. *Fees in county court.*—In prosecutions before the county court, the following fees shall be allowed for the services specified, and none others—that is to say:

For taking affidavit of complaint, and issuing warrant of arrest.....$1 00
For taking and approving bail-bond..... 50
For issuing each subpœna or notice..... 25
For each order of continuance..... 50
For trial, entering judgment, and, when an appeal is taken, approving bond, and certifying proceedings..... 5 00
For judgment on forfeited undertaking of bail... 3 00
For judgment against defaulting witness..... 2 00
For serving warrant of arrest, when bail is given, 1 00
For serving warrant of arrest, when bail is not given, and carrying defendant to court, or to jail, 2 00
For serving each subpœna or notice..... 50

§ 778. *Same; how taxed and collected.*—The fees above specified shall be taxed against the defendant on conviction, or against the prosecutor under the provisions of section 502; and, if not paid presently, may be collected by execution; but no fee shall be taxed for any service not rendered.

§ 779. *Same; to whom accruing.*—The fees taxed for services performed by the county court, or by the judge of said court, belong to the county, and, when collected, shall be paid into the county treasury; and the fees taxed for all other services shall be paid to the officers by whom the services are performed.

§ 780. *Same; judge's fees paid by county.*—The judge of the county court shall receive no other compensation than the following fees, which shall be paid out of the county treasury—that is to say:

If the warrant of arrest is issued by him, then for all the proceedings had before him in each case, including bond and certified copy of proceedings on appeal.....$4 00
If the warrant of arrest is not issued by him, then for all services in each case..... 3 00
For each judgment against a defaulting witness, or on forfeited undertaking of bail..... 2 00

§ 781. *Prosecuting attorney's fees.*—The prosecuting at-

torney for the county is entitled to the same fees, for each conviction in the county court, to which the solicitor is entitled for each conviction in the circuit or city court; to be taxed as costs against the defendant on conviction, and collected in the same manner as the solicitor's fees.

§ 782. *Justice's fees.*—Justices of the peace are entitled to the following fees in criminal cases—that is to say:

For complaint made before him	$ 25
For issuing warrant of arrest	50
For issuing search-warrant	75
For each bond or undertaking of the accused	50
For each bond or undertaking of witness	25
For issuing each subpœna or notice	25
For order of commitment to jail	25
For each trial of misdemeanor	1 00
For each order of continuance	25
For each judgment on forfeited bond or undertaking	50
For taking bond, and certifying proceedings on appeal	1 00
For each execution for costs	25

§ 783. *Same; how taxed and collected.*—In prosecutions before a justice of the peace, where the case is not taken to the circuit or city court by appeal or otherwise, the fees above specified, for such services as may be rendered in the case, must be taxed by him as costs, and collected by execution, as in cases tried in the county court; and in all other cases, must be certified by him to the court to which the proceedings are removed, or to which the process is returnable, and there taxed and collected like other costs.

§ 784. *Constable's fees.*—Constables are entitled to the following fees in criminal cases—that is to say:

For executing a search-warrant by day	$1 00
For executing a search-warrant by night	2 00
For executing any other warrant	50
For serving each subpœna or notice issued by a justice of the peace	25
For serving each subpœna or notice issued by the county court	50
For carrying a person before a magistrate under a warrant of arrest, or to jail when committed thereto, for himself and each necessary guard, to	

be proved by his own oath, for each mile..... 10

For performing any other service under process from the county court, the fees taxed for those services under section 777.

For carrying a prisoner to the jail of another county, when there is no sufficient jail in the proper county, the same fees that are allowed to the sheriff for similar services, to be paid by the county.

§ 785. *Same; how taxed and collected.*—In all criminal prosecutions, the fees specified in the last preceding section, for the services rendered in the case, must be taxed as costs by the court or justice, and collected like other costs.

§ 786. *Circuit and city clerks' fees.*—Clerks of the circuit and city courts are entitled to the following fees in criminal cases—that is to say:

For docketing each cause, to be charged but once	$ 10
For issue of any writ or notice,.....	50
Each subpœna issued.....	25
Each continuance by the defendant.....	25
Taking undertaking or recognizance, and entering the same.....	50
For each trial.....	50
Entering judgment against each defendant.....	25
Issue of each execution.....	50
Each entry of the discharge of bail on surrender of the principal, to be paid by the bail.....	50
Entering order of removal of trial, and the incidents of such removal.....	1 00
Making transcript and certificate, for each hundred words	15
Entry of forfeiture against defendant.....	50
Final judgment of forfeiture against defendant..	50
Entry of forfeiture against witnees or juror, each	25
Final judgment.....	25
Issuing execution.....	50
Final record, for each hundred words.....	15
Record for supreme court, for each hundred words,	15
Certifying same	25

§ 787. *Same; how taxed and collected.*—Of the fees specified in the last preceding section, such as accrue on a forfeiture against a defaulting juror, witness, or bail, must be taxed as costs, and collected under execution against

such witness, juror, or bail, unless excused therefrom by the court; and all the other specified fees, for such services as are rendered in the case, must be taxed as costs against the defendant on conviction, (or against the prosecutor, or the foreman of the grand jury, as provided by section 556,) and collected by execution.

§ 788. *Sheriff's fees.*—Sheriffs are entitled to the following fees and allowances in criminal cases—that is to say:

For executing search-warrant by day..... $1 00
For executing search-warrant by night..... 2 00
For executing warrant or writ of arrest..... 2 00
For each bond or undertaking returned to court.. 1 00
For serving each subpœna or notice..... 50
For committing prisoner to jail..... 1 00
For releasing prisoner from jail..... 1 00
For summoning jury in capital case, or at any special court for trial of criminal..... 3 00
For attendance each day on such court..... 2 00
For execution of criminal, to be paid by county 10 00
For levying and making money on execution for costs..... 1 00
For victualling white prisoner in jail, to be paid by the defendant on conviction, or by the State if he is insolvent, or is not convicted, for each day.. 50
For victualling each free person of color, to be paid in same manner as fees for white person, for each day,..... 40
For levying execution, and making money on judgments against defaulting jurors, witnesses, bail, and defendants, and on judgments confessed under section 212, the same fees as in civil cases.
For conveying convict to penitentiary, for every twenty miles on the route to and from the penitentiary, two and a half dollars for himself, two dollars for each guard, and one dollar and a quarter for the convict, together with the amount expended by him for tolls and ferriages.
For removing prisoner to jail of another county, when jail of proper county is insufficient, or when there is no jail in such county, and returning such prisoner when necessary, the same compensation that is allowed

by law for the removal of convicts to the penitentiary; to be paid by the defendant, on conviction; and by the county, if he is acquitted or insolvent.

For removing prisoner under order of circuit or city judge, upon removal of trial, or when arrested and confined in jail in a county other than that in which he is triable, the same compensation for himself and guards, not exceeding two for each prisoner, as is by law allowed for the removal of convicts to the penitentiary; to be paid by the defendant, on conviction; and by the State, if he is acquitted or insolvent.

§ 789. *Same; how taxed and paid.*—The fees specified in the last preceding section, except where some other provision is made by law, are to be collected and paid in the following manner:

The fees which accrue against defaulting jurors, witnesses, and bail, are to be paid by them respectively, unless excused by the court.

The fees which accrue on the removal of a convict to the penitentiary, to be proved by the affidavit of the sheriff or his deputy, and on the production of the warden's receipt for the convict, must be paid by the State treasurer, on the warrant of the comptroller of public accounts.

The fees for services rendered in each criminal case, must be taxed against the defendant on conviction, or may be taxed against the prosecutor, or the foreman of the grand jury, under the provisions of section 556; and if an execution against either of them is returned 'no property found,' or if the costs are not taxed against either of them, such costs must be paid by the State, except when they are payable by the county.

The accounts due to sheriffs which are payable by the State, except for the removal of convicts to the penitentiary, must be proved in open court before the presiding judge of the circuit or city court, and certified by him to be correct; or may be certified by the clerk of the circuit or city court, and sworn to before the judge of probate; and being so certified and proved, must be presented to the comptroller of public accounts, accompanied by the affidavit of the sheriff, to the effect that the same is correct, and that no part

thereof has been paid, and, if found correct, must be paid by warrant on the State treasurer.

No sheriff must be paid out of the State treasury any fee or allowance whatever, on account of any prisoner who has escaped from his custody; but the commissioners' court may, in their discretion, pay such fees and allowances as are payable by the county, notwithstanding the escape of the prisoner, if satisfied that such escape was not caused by the connivance or negligence of the officer having charge of him.

§ 790. *Coroner's fees.*—The coroner is entitled to the following fees:

For holding an inquest	$5 00
For summoning jury on inquest	2 00
For each subpœna	25
For each warrant of arrest	50
For each bond or undertaking returned to court	50

For money paid into the county treasury, when found on the body of a deceased person, five per cent. if less than five hundred dollars, and two and one half per cent. if over that amount.

For all other services performed by him, in cases authorized by law, the same fees that are allowed to sheriffs for similar services.

§ 791. *Same; how taxed and paid.*—Of the fees specified in the last preceding section, such as accrue for services rendered in and about an inquest, on being certified by the coroner to the clerk of the circuit or city court of the county, must be taxed as costs against any person who is convicted of the murder or manslaughter of the person on whose body the inquest was held, and be collected and paid like other costs in criminal cases; and such as accrue for all other services must be taxed, collected, and paid, in the same manner that sheriffs' fees for similar services are taxed, collected, and paid.

§ 792. *Solicitor's fees.*—Solicitors are entitled to the following fees, to be taxed as costs against the defendant on conviction, and, if he is insolvent, to be paid out of the fines and forfeitures in the county treasury—that is to say:

For each conviction under section 74 or 79	$150 00
For each conviction under section 82, 83, 84, 101, 112, 113, 114, 116, or 118	75 00

For each conviction under section 80 or 81	60 00
For each conviction under section 57, 58, 71, 75, 76, 77, 183, or 181	37 50
For each conviction under section 15, 72, 110	30 00
For each conviction under section 78, except where the defendant pleads guilty	30 00
For each conviction under section 78, where the defendant pleads guilty	15 00
For each conviction of a felony not herein above specially provided for	30 00
For each conviction of an assault, assault and battery, or affray, where a stick or other weapon was used	15 00
For each conviction of a misdemeanor, not herein above expressly provided for	7 50

For all fines and forfeitures collected and paid over by them into the county treasury, seven and one half per cent. on the amount.

For each conviction in a case removed from the county court, or from a justice's court, the same fee as if the case had originated in the circuit or city court.

§ 793. *Attorney-general's fees.*—In all criminal cases taken to the supreme court, if judgment is there rendered in favor of the State, the attorney-general is entitled to a fee of fifteen dollars, to be taxed and collected as costs.

§ 794. *Regular juror's fees.*—Regular jurors, both grand and petit, are entitled to receive one dollar and fifty cents for each day's service, five cents for each mile travelled in going to and returning from court, and ferriages; to be proved by the oath of the juror, before the clerk of the court, whose duty it is to give each juror a certificate, stating therein the number of days he has served, the number of miles he has travelled, and the amount of compensation to which he is entitled; which certificate is receivable in payment of any county dues, and payable out of the county treasury.

§ 795. *Tales jurors' fees.*—Tales jurors summoned for the trial of a capital case, under the provisions of section 621, and attending in obedience to the summons, are entitled to the same compensation for their attendance as regular jurors, and to be paid in the same manner; other tales jurors are entitled to the same compensation for each

day's attendance, excluding the day on which they are summoned, as regular jurors receive, and to be paid in the same manner.

§ 796. *Witness' fees.*—Witnesses in criminal cases are entitled to the same compensation as in civil cases, to be paid in the manner specified in section 668 and 669.

Title Fourth.

OF SPECIAL QUASI-CRIMINAL PROCEEDINGS.

Chapter 1. Absconding felons, and fugitives from justice.
" 2. Coroner's inquest.
" 3. Search-warrants.

CHAPTER I.

ABSCONDING FELONS, AND FUGITIVES FROM JUSTICE.

Section 797. Reward for absconding felon.
" 798. Fugitive from other State delivered up on demand of executive.
" 799. Warrant of arrest issued by magistrate.
" 800. Arrest and commitment as in other cases.
" 801. Committed to await requisition of governor.
" 802. Bailed, except in capital cases.
" 803. Discharged on bail, unless arrested under governor's warrant.
" 804. Jail fees paid in advance.
" 805. Forfeiture of undertaking of bail.
" 806. At expiration of time, discharged, bailed, or re-committed.
" 807. If prosecuted here, surrender discretionary.
" 808. Governor's warrant directed to whom.
" 809. Executed where and how.
" 810. Authority of arresting officer, &c.
" 811. Confinement in jail when necessary.

§ 797. *Reward for absconding felon.*—Whenever any person who is charged with the commission of any felony, absconds before being arrested, or escapes from custody, either before or after conviction, the governor is authorized, in his discretion, to offer by proclamation a reward, not exceeding four hundred dollars, for his apprehension or re-

arrest within five years from the date of such proclamation; and to draw his warrant on the State treasurer for the amount of such reward, when necessary to be paid.

§ 798. *Fugitive from other State delivered up on demand of executive.*—Any person charged in any State or territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this State, must, on the demand of the executive authority of the State or territory from which he fled, be delivered up by the governor of this State, to be removed to the State or territory having jurisdiction of such crime.

§ 799. *Warrant of arrest issued by magistrate.*—A warrant for the apprehension of such person may be issued by any magistrate who is authorized to issue a warrant of arrest.

§ 800. *Arrest and commitment as in other cases.*—The proceedings for the arrest and commitment of the person charged, are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offense, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State or territory in which he is charged to have committed the offense, must be received as conclusive evidence before the magistrate.

§ 801. *Commitment to await requisition of governor.*—If, from the examination, it appears that the person charged has committed the crime alleged, the magistrate must, by warrant, reciting the accusation, commit him to jail for a time specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive to be made, under the warrant of the executive of this State, on the requisition of the executive authority of the State or territory in which he committed the offense, unless he give bail as provided in the next section, or until he is legally discharged.

§ 802. *Bailed, except in capital cases.*—The magistrate must, unless the offense with which the fugitive is charged is shown to be an offense punishable capitally by the laws of the State in which it was committed, admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in such bond or under-

taking, and for his surrender, to be arrested upon the warrant of the governor of this State.

§ 803. *Discharged on bail, unless arrested on governor's warrant.*—If such person is not arrested under the warrant of the governor, before the expiration of the time specified in the warrant, bond, or undertaking, he must be discharged from custody on bail.

§ 804. *Jail fees paid in advance.*—No jailor is bound to receive any person committed under a warrant issued under the provisions of this chapter, until his jail fees for the time specified in such warrant are paid in advance.

§ 805. *Forfeiture of undertaking of bail.*—If the fugitive is discharged on bail, and fails to appear or surrender himself according to his bond or undertaking, the magistrate must endorse thereon "forfeited," sign his name thereto, and return it to the clerk of the circuit court by the first day of the next term; and a conditional judgment must be rendered thereon, and proceedings had, as in case of bonds or undertakings forfeited in that court, the endorsement of the magistrate being presumptive evidence of the forfeiture.

§ 806. *At expiration of time, discharged, bailed, or re-committed.*—At the expiration of the time specified in the warrant, the magistrate may discharge or re-commit him to a further day, or may take bail for his appearance and surrender, as provided in section 802; on his appearance, or if he has been bailed and appear according to the terms of his bond or undertaking, the magistrate may either discharge him therefor, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

§ 807. *If prosecuted here, surrender discretionary.*—If a criminal prosecution has been instituted against such person under the laws of this State, the governor may or not, at his discretion, surrender such person on the demand of the executive of another State, before he has been tried and punished, if convicted, or discharged.

§ 808. *Governor's warrant directed to whom.*—A warrant from the executive may be directed to the sheriff, coroner, or any other person whom he may think fit to entrust with the execution of the same.

§ 809. *Executed where and how.*—Such warrant author-

izes the officer or person to whom it is directed, to arrest the fugitive at any place within the State, and to require the aid of all sheriffs and constables to whom the same is shown, to aid and assist in the execution thereof.

§ 810. *Authority of arresting officer, &c.*—Every such officer or person has the same authority in arresting the fugitive to command assistance therein, as sheriffs and other officers by law have in the execution of criminal process directed to them, with the like penalties on those who refuse their assistance.

§ 811. *Confinement in jail when necessary.*—The officer or person executing such warrant, may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass; and the keeper of such jail must receive and safely keep the prisoner, until the person having charge of him is ready to proceed on his route, such person being chargeable with the expenses of keeping.

CHAPTER II.

CORONER'S INQUEST.

Section 812. Jury of inquest summoned by coroner.
" 813. Oath of jury.
" 814. Witnesses and surgeons summoned.
" 815. Service of subpœnas; proceedings against defaulting witness.
" 816. Witness refusing to answer; penalty.
" 817. Verdict of jury.
" 818. Inquest returned to court; witnesses recognized, &c.
" 819. Warrant of arrest against supposed criminal; arrest, commitment, &c.
" 820. Money &c. of deceased paid into county treasury; penalty.
" 821. How disposed of.
" 822. Paid to legal representative of deceased.
" 823. Compensation of surgeons and physicians.
" 824. Inquest held by justice of the peace.

§ 812. *Jury of inquest summoned by coroner.*—When a coroner has been informed that a person has been killed or suddenly died under such circumstances as to afford a reasonable ground for belief that his death has been occasioned by the act of another by unlawful means, he must forth-

with summon a jury of six discreet householders of the county, to appear before him forthwith, at a specified place, to inquire into the cause of the death.

§ 813. *Oath of jury.*—When five or more of the jurors appear, they must be sworn to inquire who the person was, and when, where, and by what means, he came to his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

§ 814. *Witnesses and surgeons summoned.*—The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint; he must summon and examine as a witness any person who, in his opinion or that of any of any of the jury, has any knowledge of the facts; and he may also summon as a witness a surgeon or physician, who must, in the presence of the jury, inspect the body, and give a professional opinion as to the cause of the death.

§ 815. *Service of subpœnas; proceedings against defaulting witness.*—The sheriff or any constable must serve the subpœnas, or they may be served by the coroner; and if any witness, being subpœnaed, fails to attend, the coroner must endorse on the subpœna his default, sign his name thereto, and return the same to the clerk of the circuit court of the county, within five days thereafter; and such witness must be proceeded against in such court, in the name of the State, as if he was a defaulter therein, the endorsement of the coroner being presumptive evidence of the default.

§ 816. *Witness refusing to answer; penalty.*—Any witness who refuses to answer any question in relation to the cause of such death, except on the ground that it may criminate himself, is guilty of a misdemeanor, and must be committed to jail by the coroner, unless he gives bail, in the sum of five hundred dollars, to appear at the circuit court and answer such offense; and, on conviction thereof, must be fined, not less than two hundred, nor more than five hundred dollars, and may be imprisoned not exceeding three months.

§ 817. *Verdict of jury.*—After inspecting the body and hearing the testimony, the jury must render their verdict, and certify it by an inquisition in writing, signed by them, set-

ting forth who the person is, and when, where, and by what means he came to his death; and if his death was occasioned by the act of another by unlawful means, who is guilty thereof; and if the person, means, or manner of his death, or the person by whose act he came to his death, are unknown, the inquisition must so state.

§ 818. *Inquest returned to court; witnesses recognized, &c.* The inquisition thus taken must be returned by the coroner forthwith, to the clerk of the circuit court of the county; and he must also require all material witnesses to enter into an undertaking to appear at the circuit court, if in session, or if not, to the next circuit court, and may require security to such undertaking; and, on the failure of the witness to enter therein, may commit him until he enters into the same.

§ 819. *Warrant of arrest against supposed criminal; arrest, commitment, &c.*—If the jury find that the deceased came to his death by the act of another by unlawful means, the coroner may issue a warrant of arrest for such person, which may be executed according to the provisions of the fifth chapter of title third, and the person when arrested, brought before a magistrate of the county in which the inquest was held, who must proceed to examine the charge, and commit, bail, or discharge the defendant, as upon a warrant of arrest under the provisions of such chapter.

§ 820. *Money &c. of deceased paid into county treasury; penalty.*—The coroner must, within thirty days after an inquest on a dead body, deliver to the county treasurer any money or other property which may be found on the body, unless claimed in the mean time by the legal representatives of the deceased; if he fail to do so, the treasurer may proceed against him for the amount or value thereof, on ten days' notice to him and his sureties, or against any of them served therewith; and recover the same, with twenty per cent. damages on the amount or value of the same.

§ 821. *How disposed of.*—Upon the receipt of the money by the treasurer, he must place it to the credit of the county. If it be other property, he must, within three months, sell it at the court-house of the county, at public auction, upon reasonable public notice; and must in like manner place the proceeds to the credit of the county.

§ 822. *Paid to legal representative of deceased.*—If the money in the treasury be demanded in six years by the legal representatives of the deceased, the treasurer must pay it to them, after deducting the fees of the coroner, expenses of sale, and five per cent. on the balance for the treasurer; or it may be paid at any time thereafter, upon the order of the county commissioners.

§ 823. *Compensation of surgeons and physicians.*—Any surgeon or physician, who, being duly subpœnaed, attends a coroner's inquest, examines the body, and gives a professional opinion thereon, is entitled to receive five dollars, with one dollar additional for each mile he may be compelled to travel in attending such inquest; to be collected out of the estate of the deceased, if solvent; and if insolvent, to be paid out of the county treasury.

§ 824. *Inquest held by justice of the peace.*—If the coroner is absent from the county, or is unable to act, any justice of the peace may hold an inquest on the body of any deceased person, under the rules and regulations in this chapter prescribed; and is entitled to the same compensation for his services that is by law allowed to the coroner.

CHAPTER III.

SEARCH-WARRANTS.

Section 825. Definition of warrant.
" 826. On what ground issued.
" 827. Probable cause, and affidavit.
" 828. Plaintiff examined on oath, &c.
" 829. Contents of depositions.
" 830. Warrant to issue, if cause shown.
" 831. Form of warrant.
" 832. By whom executed.
" 833. When executed.
" 834. Authority of officer.
" 835. Property taken where, and from whom.
" 836. Receipt given for property.
" 837. Returned in ten days.
" 838. Return made to magistrate; copies to parties.
" 839. Disposal of property by magistrate.
" 840. Contest of facts before magistrate.
" 841. When property restored to defendant.
" 842. When proceedings returned to court.
" 843. Costs; when taxed against plaintiff.
" 844. Person of felon searched for weapons.

§ 825. *Definition of warrant.*—A search-warrant is an order in writing, in the name of the State, signed by a magistrate, directed to any sheriff or constable, commanding him to seach for personal property and bring it before the magistrate.

§ 826. *On what ground issued.*—It may be issued on any one of the following grounds: 1st, where the property was stolen or embezzled; 2d, where it was used as the means of committing a felony; and, 3d, where it is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another, to whom he may have delivered it, for the purpose of concealing it, or preventing its discovery.

§ 827. *Probable cause, and affidavit.*—It can only be issued on probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

§ 828. *Plaintiff examined on oath, &c.*—The magistrate must, before issuing the warrant, examine on oath the complainant, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the persons making them.

§ 829. *Contents of depositions.*—The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

§ 830. *Warrant to issue, if cause shown.*—If the magistrate is satisfied of the existence of the grounds of the application, or that there is probable ground to believe their existence, he must issue a search-warrant signed by him, directed according to the provisions of section 825, commanding the officer forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

§ 831. *Form of warrant.*—The warrant may be, substantially, in the following form:

"The State of Alabama, }
County. } To the sheriff or any constable of —— county: Proof by affidavit having this day been made before me by A. B., that" (stating the particular ground on which the warrant is sued out; or, if the affidavits are not positive, "that there is probable ground for believing that" &c.) "you are therefore commanded, in the

day time," (or "at any time of the day or night," as the case may be,) "to make immediate search on the person of C. D." (or "in the house of C. D.", as the case may be,) "for the following property," (particularly describing it,) "and if you find the same, or any part thereof, to bring it forthwith before me, at" &c. (stating the place.) "Dated the —— day of ——, 186—."

(Signed,) "E. F.

justice of the peace of said county."

§ 832. *By whom executed.*—The warrant may be executed by any one of the officers to whom it is directed, but by no other person, except in aid of such officer, at his request, he being present, and acting in its execution.

§ 833. *When executed.*—It must be executed in the day time, unless the affidavits state positively that the property is on the person, or in the place to be searched; in which case, it may be executed at any time of the day or night; and the magistrate issuing it must state in the warrant, according to the character of the affidavits, whether it is to be executed by day, or at any time of the day or night.

§ 834. *Authority of officer.*—To execute the warrant, the officer may break open an outer door or window of a house, or any part of a house, or any thing therein, if, after notice of his authority and purpose, he is refused admittance.

§ 835. *Property taken where, and from whom.*—When the warrant is sued out on the first ground specified in section 826, the property may be taken, under the warrant, from any house or other place in which it is concealed, or from the possession of any person by whom it was stolen or embezzled, or from any other person in whose possession it may be; when sued out on the second ground specified in said section, it may be taken, under the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was so used, or from any other person in whose possession it may be; and when sued out on the third ground specified in said section, the property may be taken, under the warrant, from the possession of such person, or from any house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

§ 836. *Receipt given for property.*—When an officer takes

property under the warrant, he must, if required, give a receipt to the person from whom it was taken, or in whose possession it was found.

§ 837. *Returned in ten days.*—The warrant must be executed, and returned to the magistrate by whom it was issued, within ten days after its date; and after that time, if not executed, it is void.

§ 838. *Return made to magistrate; copies to parties.*—The officer must return the warrant to the magistrate, specifying in his return with particularity the property taken; and the applicant for the warrant, and the person from whose possession the property was taken, are entitled to a copy of the return, signed by the magistrate.

§ 839. *Disposal of property by magistrate.*—When the property is taken under the warrant, and delivered to the magistrate, he must, if it was stolen or embezzled, cause it to be delivered to the owner, on satisfactory proof of his title, and the payment by him of all fees; but, if the warwant was issued on the second or third ground specified in section 826, he must retain the property in his possession, subject to the order of the court to which he is required to return the proceedings, or of the court in which the offense is triable in respect to which the property was taken.

§ 840. *Contest of facts before magistrate.*—If the grounds on which the warrant was issued be controverted, the magistrate must proceed to hear the testimony, which must be reduced to writing, and authenticated, in the manner prescribed in section 829.

§ 841. *When property restored to defendant.*—If it appear that the property is not the same as that prescribed in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant issued, the magistrate must direct it to be restored to the person from whom it was taken.

§ 842. *When proceedings returned to court.*—The magistrate must, if the property is not directed to be restored under the provisions of the preceding section, annex together the search-warrant, the return, and depositions, and return them to the circuit court having power to inquire into the offense in respect to which the search-warrant was issued.

§ 843. *Costs; when taxed against plaintiff.*—The com-

plainant must pay the fees of the warrant before he is entitled to the same, and must also pay the officer his fees for the execution, before the same is executed; and if on the hearing it appear that there was no probable cause for believing the existence of the grounds on which the warrant was issued, the whole costs may be taxed against the complainant, and an execution issued therefor, returnable on any day the magistrate may direct.

§ 844. *Person of felon searched for weapons.*—When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or any things which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and such weapon or other thing to be retained, subject to the order of the court in which the defendant maybe tried.

APPENDIX.

FORMS OF INDICTMENTS.

No. 1. *Caption, commencement, and conclusion.* § 561.

"The State of Alabama, } Circuit Court,
——— County. } ——— term, 186—.

"The grand jury of said county charge, that, before the finding of this indictment," &c., (describing the offense as in the following forms,) "against the peace and dignity of the State of Alabama."

"E. J. F.,
solicitor of the ——— circuit."

No. 2. *Murder.* § 111.

"A. B., unlawfully, and with malice aforethought, killed C. D., by shooting him with a gun or pistol," &c.; or "by striking him with an iron weight;" or "by throwing him from the top of a house;" or "by pushing him into the river, whereby he was drowned," &c., as the case may be.

No. 3. *Manslaughter in the first degree.* § 117.

"A. B., unlawfully and intentionally, but without malice, killed C. D., by stabbing him with a knife," &c.; or "by striking him with a stick," &c., as the case may be.

No. 4. *Manslaughter in the second degree.* § 117.

"A. B., unlawfully, but without malice, or the intention to kill, killed C. D., by negligently throwing a brick from the top of a house," &c.; or "by negligently running over

him with a horse;" or "by striking him with a stick," &c., as the case may be.

No. 5. *Killing in sudden rencounter with concealed weapon.* § 114.

"A. B. unlawfully killed C. D., in a sudden rencounter, by the use of a deadly weapon concealed before the commencement of the fight; the said A. B. being the assailant, and his adversary having no deadly weapon drawn."

No. 6. *Using fire-arms while fighting in public place.* § 129.

"A. B., while fighting at a militia muster," (or "in a street of the city of Mobile," or "at a public place,") "used, or attempted to use, a pistol," (or "gun," as the case may be,) "not in self-defense," &c.

No. 7. *Rape.* § 119.

"A. B. forcibly ravished C. D., a female," &c.

No. 8. *Carnal knowledge of female child.* § 121.

"A. B. did carnally know, or abuse in the attempt to carnally know C. D., a female under the age of ten years."

No. 9. *Compelling woman by force to marry, &c.* § 124.

"A. B. did take C. D., a woman, unlawfully, and against her will, by menace, force, or duress, did compel her to marry him"; or "to marry one E. F.," or "to be defiled," &c., as the case may be.

No. 10. *Decoying away child.* § 145.

"A. B. did take, or decoy away C. D., a child under twelve years of age, with intent to detain or conceal the said C. D. from his [or her] parents"; or "guardian", &c., as the case may be.

No. 11. *Kidnapping.* § 146.

"A. B. unlawfully, or forcibly, inveigled, enticed, or confined C. D., with intent to cause the said C. D. to be imprisoned against his will"; or "to be sent out of the State

against his will", or "to be sold elsewhere into slavery", &c., as the case may be.

No. 12. *Robbery.* § 126.

"A. B. feloniously took a gold watch, the property of C. D., from his person, and against his will, by violence to his person, or by putting him in such fear as unwillingly to part with the same."

No. 13. *Mayhem.* § 127.

"A. B. unlawfully, maliciously, and intentionally, cut out or disabled the tongue of C. D."; or "put out or destroyed an eye of C. D.", &c.

No. 14. *Assault with intent to murder.* § 128.

"A. B. unlawfully, and with malice aforethought, did assault C. D., with the intent to murder him."

No. 15. *Assault with intent to ravish.* § 128.

"A. B. did assault C. D., a female, with the intent forcibly to ravish her."

No. 16. *Assault with cowhide, &c., having pistol to intimidate.* § 130.

"A. B. did assault and beat C. D. with a cowhide, stick, or whip, having in his possession at the time a pistol," (or "a bowie-knife," or other deadly weapon,) "with the intent to intimidate the said C. D. and prevent him from defending himself."

No. 17. *Lynching.* § 141.

"A. B. and C. D. did abuse, whip, or beat E. F., upon an accusation that he had been guilty of stealing"; or "to force the said C. D. to disclose where he was on the night of the twenty-first of August, one thousand eight hundred and sixty-six"; or "to leave the county", &c., as the case may be.

No. 18. *Assault and battery.* § 142.

"A. B. assaulted and beat C. D."

No. 19. *Affray.* § 8.

"A. B. and C. D. did fight together in a public place."

No. 20. *Riot.* § 10.

"A. B., C. D., and E. F., being unlawfully assembled, did demolish, pull down, or destroy, or begin to demolish, pull down, or destroy a dwelling-house."

No. 21. *Carrying concealed weapons.* §§ 15, 586.

"A. B. carried a pistol concealed about his person."

No. 22. *Living in adultery or fornication.* § 57.

"A. B., a man, did live with C. D., a woman, in a state of adultery or fornication."

Or, "A. B., a man, and C. D., a woman, did live together in a state of adultery or fornication."

No. 23. *Bigamy.* § 58.

"A. B., having a wife then living, unlawfully married one C. D."

No. 24. *Disturbing religious worship.* § 71.

"A. B. willfully interrupted or disturbed an assemblage of people met for religious worship, by noise, profane discourse, or rude or indecent behavior, at or near the place of worship;" or "by fighting at or near the place of worship," or as the case may be.

No. 25. *Removing dead body from grave.* § 65.

"A. B. removed from the grave the dead body of C. D., from wantonness, or for the purpose of dissection or sale."

No. 26. *Lotteries.* § 74.

"A. B. set up, or was concerned in setting up, or carrying on a lottery, without the legislative authority of this State."

No. 27. *Card-playing at public places.* §§ 78, 584.

"A. B. played at a game with cards, or dice, or some

device or substitute for cards or dice, at a tavern, inn, store-house for retailing spirituous liquors, or house or place where spirituous liquors were at the time sold, retailed, or given away, or in a public house, highway, or some other public place, or at an outhouse where people resort."

No. 28. *Keeping gaming-table.* §§ 79, 585.

"A. B. kept or exhibited a gaming-table for gaming, or was interested or concerned in the keeping or exhibition thereof."

No. 29. *Betting at gaming-table, &c.* § 80.

"A. B. bet at a gaming-table for gaming;" or "at a game called keno," &c.

No. 30. *Retailing without license.* §§ 76, 583.

"A. B. sold vinous or spirituous liquor, without license, and contrary to law."

No. 31. *Selling liquor to minor, &c.* § 77.

"A. B., a licensed retailer," (or "a person keeping vinous, fermented, or spirituous liquors for sale," as the case may be,) "sold, gave, or delivered to one C. D., a minor," (or "an apprentice," or "a student or pupil of a school or academy;" or "to E. F. for the use of C. D., a minor," &c., "knowing the use for which it was intended,") "vinous, fermented, or spirituous liquor, without the consent of the parent, guardian, or person having charge of the said C. D."

No. 32. *Poisoning spring, &c.* § 139.

"A. B., willfully and wantonly, poisoned a spring of water in the yard of C. D." or "a reservoir of water in the public square in the town of Tuskegee," &c.

No. 33. *Endangering life by overloading steamboat.* § 134.

"A. B., while navigating a steamboat for gain, willfully received on board thereof so many passengers, or such a quantity of freight, that, by means thereof, such steamboat sunk or overturned, and thereby endangered the life of a human being."

No. 34. *Endangering life by bursting boiler, &c.* § 132.

"A. B., being the engineer of a steamboat used for the conveyance of passengers or freight, and in charge of the machinery thereof, or of some of the apparatus for the generation of steam, from gross negligence, or from ignorance, created, or allowed to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which steam was generated, or some apparatus or machinery therewith connected, and thereby endangered human life."

No. 35. *Burglary.* § 149.

"A. B. broke into and entered the dwelling-house of C. D., with intent to steal;" or "a building within the curtilage of the dwelling-house of C. D." &c.

No. 36. *Arson in the first degree.* § 151.

"A. B. willfully set fire to or burned, in the night time, a dwelling-house of C. D., in which there was at the time a human being."

No. 37. *Arson in the second degree.* § 152.

"A. B. willfully set fire to or burned an inhabited dwelling-house of C. D."

No. 38. *Fraudulent conveyances.* § 158.

"A. B., with the intent to hinder, delay, or defraud his creditors, did make a conveyance of property to C. D."; or "A. B. did accept from C. D. a conveyance of property, with the intent to hinder, delay, or defraud the creditors of the said C. D."

No. 39. *Removing mortgaged property.* § 159.

"A. B. did remove a certain horse, with the intent to carry the same out of the State, for the purpose of hindering, delaying, or defrauding C. D., who had a claim to such horse under a written instrument of which the said defendant had a knowledge."

No. 40. *Grand larceny.* §§ 160, 588.

"A. B. feloniously took and carried away a horse, the

personal property of C. D."; or "a gold watch, of the value of more than one hundred dollars, the personal property of C. D."

No. 41. *Larceny from building on fire.* § 161.

"A. B. feloniously took and carried away from a building on fire a silver watch, of the value of more than fifty dollars, the personal property of C. D."

No. 42. *Larceny in dwelling-house.* § 161.

"A. B. feloniously took and carried away from a dwelling-house a diamond breast-pin, of the value of more than fifty dollars, the personal property of C. D."

No. 43. *Larceny from the person.* § 161.

"A. B. feloniously took and carried away from the person of C. D. one bank-note for one hundred dollars, on the bank of Mobile, of the value of more than fifty dollars, the personal property of C. D."

No. 44. *Perjury on trial of felony.* §§ 17, 589.

"A. B., on his examination as a witness, duly sworn to testify, on the trial of one C. D. in the —— court of —— county, under an indictment for the murder of one E. F., which said court had authority to administer such oath, falsely swore," &c., stating the facts; "the matters so sworn to being material, and the testimony of the said A. B. being willfully and corruptly false."

No. 45. *Perjury in other case.* §§ 18, 589.

"A. B., on an application for a continuance in a civil action in the —— court of —— county, in which one C. D. was plaintiff and the said A. B. defendant, being duly sworn by the clerk of said court, who had authority to administer such oath, falsely swore," &c., stating the facts; "the matters so sworn to being material, and the oath of the said A. B. in relation to such matters being willfully and corruptly false."

No. 46. *Voluntary escape by sheriff.* § 28.

"A. B., while sheriff of said county, having the legal

custody of one C. D., who was charged with burglary," (or "indicted for robbery," as the case may be,) "voluntarily permitted the said C. D. to escape."

No. 47. *Negligent escape by officer.* § 29.

"A. B., while jailor of said county, having the legal custody of one C. D., who was convicted of grand larceny, negligently suffered the said C. D. to escape."

No. 48. *Extortion.* § 52.

"A. B., being a justice of the peace of said county, knowingly took from C. D. five dollars for the issue of a search-warrant, being a greater fee than was by law allowed for such service."

No. 49. *Compounding felony.* § 46.

"A. B., knowing that one C. D. had been guilty of the commission of burglary, took, or agreed to take, from the said C. D. money or other property, to compound or conceal such felony, or to abstain from any prosecution therefor."

No. 50. *Resisting officer in executing process.* § 39.

"A. B. did knowingly and willfully oppose or resist C. D., the sheriff of said county, in attempting to serve or execute a writ of execution, called a *fieri facias*, issued by the clerk of the circuit court of said county," (or as the case may be, describing the process generally.)

No. 51. *Obtaining money by false pretenses.* §§ 168, 576.

"A. B. did falsely pretend to C. D., with intent to defraud, that he had ten bales of cotton packed and ready for delivery, and, by means of such false pretense, obtained from the said C. D. one hundred dollars," or "ten pieces of cloth," as the case may be.

No. 52. *Obtaining property by false personation.* §§ 170, 576.

"A. B. falsely personated C. D., with intent to defraud, and, in such assumed character, received one hundred dollars intended to have been delivered to the said C. D."

No. 53. *Embezzlement &c. by bank officer.* §§ 173, 587.

"A. B., an officer of the Central Bank of Alabama, a bank incorporated under the laws of this State, embezzled, or fraudulently converted to his own use, money to about the amount of five hundred dollars," (or "bank-notes to the amount of about one thousand dollars," as the case may be,) "which was in the possession of the said bank, or deposited therein."

No. 54. *Exhibiting false samples.* § 184.

"A. B. fraudulently exhibited a false sample of sugar, by means whereof one C. D. was injured."

No. 55. *Altering marks, brands, &c.* §§ 185, 588.

"A. B., with intent to defraud, marked or branded an unmarked horse, the property of C. D."

No. 56. *Malicious injury to animals.* §§ 186, 588.

"A. B., unlawfully and maliciously, disabled or injured a cow, the property of C. D."

No. 57. *Counterfeiting gold or silver coin.* § 95.

"A. B. counterfeited a silver coin of the republic of Mexico, called a dollar, which was at the time, by law, usage, and custom, current in this State."

No. 58. *Same.* § 95.

"A. B. had in his possession a counterfeit of a gold coin of the United States, called an eagle, which was at the time current in this State; knowing the same to be counterfeit, and with intent to defraud or injure by uttering the same as true, or causing it to be so uttered."

INDEX.

	SECTION.
ABATEMENT—	
of prosecutions in circuit court, on plea	385
requisites of such plea	386
of indictment; verification of plea	634
on account of defects in grand jury	635
plea filed at first term	636
if sustained, defendant not discharged	636
ABORTION—	
attempts to procure, punishment of	64
ABSCONDING FELONS—	
reward offered for apprehension of	797
ABUSIVE LETTERS—	
sending, punishment of	13
ACCESSORIES—	
after the fact, who are, and how punished	48
may be prosecuted before principal	49
before the fact, indicted and tried as principals	579
ACCOMPLICE—	
evidence of, uncorroborated, not sufficient to convict of felony	641
ADULTERATING LIQUORS—	
punishment of	92
ADULTERATING SUGAR—	
punishment of	91
ADULTERY—	
living in, punishment of	57
form of indictment, No. 22, p. 209.	
AFFRAY—	
punishment of	8
abusive words admissible evidence	646
when triable before justice of the peace	384
duty of sheriff to suppress	407
form of indictment, No. 19, p. 209.	
ALIEN—	
not allowed on jury	633
ALTERING BRANDS, &c.—	
punishment of	185
form of indictment, No 55, p. 214.	
AMENDMENT—	
of indictment allowed, with defendant's consent	593
or *nolle-pros.* entered, &c	594
of proceedings in county court	503
ANSWER IN CHANCERY—	
of convict in penitentiary, how taken	364

	SECTION.
APPEALS—	
from judgment requiring sureties to keep the peace	419
undertaking in such case, form of	420
returned to court	421
trial in court *de novo*	422
costs, and execution for	423
from justice's judgment, to circuit court	480
trial in court *de novo*	481
from county court, to circuit court	504
transcript &c. forwarded by judge	505
subpœnas for witnesses	506
trial *de novo*	509
practice, evidence, &c., as in other cases	510
forfeiture of appeal bond	507
from circuit court, to supreme court	751-6
question of law reserved by defendant	751
transcript forwarded by clerk	752
judgment suspended	753-4
for misdemeanor, bail allowed	754
assignment of error unnecessary	763
joinder in error unnecessary	763
affirmance of judgment	764
reversal of judgment	765
APPRENTICES—	
betting with, punishment of	82
selling or giving liquor to, punishment of	77
enticing away, punishment of	147
ARRAIGNMENT—	
proceedings on	617-20
ARREST—	
by officer, made by whom	434
under warrant, when and how made	435
where made	436-7
without warrant, when made	445
how made	446
duty of private person to assist	447
penalty for refusal to assist	40-41
by private person, when allowed	449
his authority and duty	450
for felony, made at any time	451
person arrested taken before magistrate	452
privilege from, of officer and guards conveying convict to penitentiary	320
witnesses	665
warrant of, when issued for threatened breach of the peace,	410
by whom executed	411
when issued by magistrate for public offense	431
form of	432
contents, and to whom directed	433
authority of officer in executing	435
where executed	436
when and how executed in another county	436-39
discharge on bail by officer	440
magistrate	441
amount of bail	442
bail-piece and warrant returned to court	443
when defendant carried before magistrate by whom warrant was issued	444
in county court, form of	484
by whom issued	483
executed	485

	SECTION.
ARREST—*Continued.*	
alias, when issued	496, 507
how executed	508
by governor, for fugitive from other State	798–810
when issued by magistrate	799
proceedings under	800
to whom directed	808
where and how executed	809
writ of, form of, for felony	602
misdemeanor	603
issued by clerk, solicitor, or circuit judge	601
executed by sheriff, and how	604
penalty for failure to execute	615
copy delivered to jailor on commitment	610
return of, when and how made	611–12
penalty for failure to make	613
taken from postoffice by clerk	614
alias issued when necessary	762, 616
without process, by order of court	600
magistrate	448
re-arrest after escape	453
of person sentenced to death but not executed	379
ARREST OF JUDGMENT—	
new indictment preferred	596
statute of limitations suspended meanwhile	597
ARSON—	
in first degree, definition and punishment of	151
second degree, definition, and punishment of	152
third degree, definition and punishment of	153
burning insured building, &c.	154
no limitation to prosecution for	401
forms of indictments, Nos. 36–7, p. 211.	
ASSAULT—	
punishment of	142
and battery, punishment of	142
abusive words admissible evidence	646
when triable before justice of peace	384
form of indictment, No. 18, p. 208.	
on accusation, &c., punishment of	141
form of indictment, No. 17, p. 208.	
with cowhide, &c., having pistol to intimidate, punishment of	130
form of indictment, No. 16, p. 208.	
with intent to murder, ravish, &c., punishment of	128
forms of indictments, Nos. 14, 15, p. 208.	
by convict in penitentiary, on officer	353
ATTACHMENT—	
to compel return to *habeas corpus*	741
ATTORNEY-GENERAL—	
fees of	793
BAIL—	
admission to, defined	681
taking of, defined	682
when matter of right	684
when not allowed in capital cases	683
when allowed in capital cases	685-6
form of entry, when taken in open court	687
form and requisites, when not taken in court	688
when probate judge may take	689
for felonies, fixed by circuit court, and taken by sheriff	690
application for, only one allowed	691

BAIL—*Continued.* SECTION.
if refused, exception reserved, and application made to supreme court 691
amount fixed by supreme court, and taken by judge or sheriff 692
effect of undertaking 693–4
forfeiture not affected by mistake 694
how taken for lunatics, infants, and married women 695
qualifications of 696
required to justify when doubtful 697
not discharged by irregularities 698
discharged by surrender of principal 699–700
new undertaking taken by sheriff, when 700
undertakings returned to court 701–2
conditional judgment on forfeiture 703
notice of conditional judgment 704
service and return of notice 705
alias notice issued when necessary 706
two returns 'not found' equal to service 706
forfeiture set aside, reduced, or made absolute 707
excuses for default heard at any time 708
allowed without costs 708
when taken by arresting officer 440
magistrate 462, 441
amount 442
on commitment 465
in county court 487–8
when taken by sheriff, on arrest under indictment for misdemeanor 605
form of undertaking 606
in open court 607
by sheriff, in vacation, for felony 608
misdemeanor 609
on *habeas corpus*, when charged with bailable offense 731
excessive bail in civil action reduced 732
undertakings returned to court 733
of fugitive from other State 802–5
false personation of 45
BENEFIT OF CLERGY—
abolished 209
BETTING—See GAMING.
BIGAMY—
punishment of 58
exception as to divorced person, and in case of absence .. 59
form of indictment, No. 23, p. 209.
BILLIARDS—
betting at, punishment of 81
BONDS—See OFFICIAL BONDS.
BRANDS, ALTERING—
punishment of 185
form of indictment, No. 55, p. 214.
BRIBERY—
of executive, legislative, or judicial officer 20
acceptance of bribe by such officer 21
of ministerial officer, juror, or arbitrator 22
juror, if summoned, need not be sworn 23
acceptance of bribe by such officer 24
of officer to stock jury 26
connivance of sheriff at such offense 27
BURGLARY—
definition, and punishment of 149

SECTION.

BURGLARY—*Continued.*
form of indictment, No. 35, p. 211.
possession of burglarious instruments 150
BURNING—
insured house, vessel, &c. 154
pine forest willfully 197
negligently 198
woods 196
CARNAL KNOWLEDGE—See RAPE.
CERTIORARI—
issued when necessary, on change of venue 659
CHALLENGES—
punishment for sending, carrying, or accepting 11
of jurors, see title JURORS.
CHANGE-BILLS—
punishment for circulating 102
issuing 101
CHANGE OF VENUE—
proceedings on ..... 654—60
CLAIRVOYANCE—
punishment for practicing 75
CLERGY, BENEFIT OF—
abolished 209
COMMON CARRIERS—
embezzlement by 172
COMMUTATIONS—See PUNISHMENTS.
COMPOUNDING FELONY—
punishment of 46
conviction of principal felon not necessary 47
form of indictment, No. 49, p. 213.
CONCEALED WEAPONS—
punishment for carrying 345
form of indictment, No. 21, p. 209.
CONSPIRACY—
to commit felony, punishment of 50
misdemeanor 51
CORONER—
fees of 790
how taxed and paid 791
inquest, proceedings on ..... 812—24
COSTS—
confession of judgment for, by defendant 212
execution as in civil cases 214
if not paid, or judgment confessed, imprisonment or hard labor imposed 213
same, when imposed on prosecutor 215
when imposed on prosecutor in circuit court 556
county court 502
against parties to appeal bond, on proceedings to keep the peace 423
in *habeas corpus* case ..... 745—8
proceedings under search-warrant 843
how many witnesses allowed, &c. 671
hard labor imposed to cover 511
not imposed on setting aside conditional judgment 708
COUNTERFEITING—
gold or silver coin, punishment of 95, 100
forms of indictment, Nos. 57-8, p. 214.
engraved plate of bank-note, &c., punishment of 96-7, 100
public seal 98, 100

	SECTION.
COURT—	
circuit, jurisdiction of	381
proceedings in	512–660
city, jurisdiction of	382
proceedings in	512-660
county, jurisdiction of	383
judge, *ex-officio*, probate judge	387
official oath	387
bond	388
clerk	389
fees	779-80
proceedings in	482-511
monthly terms; notice	482
attended by sheriff	390
prosecuting attorney, appointment and duties of	391
fees	781
warrant of arrest, issued by whom	483
form of	484
executed by whom	485
speedy trial; continuance	486
bail, taken by arresting officer	488
form of undertaking	487
subpœnas, form of	490
issued and executed by whom	489
conditional judgment on default	491
notice of	492
final judgment on default	493
forfeiture remitted on cause shown	494
proceedings against defaulting witness	495
alias warrant of arrest, or subpœna	496
copy of accusation delivered on demand	497
if trial by jury demanded, bound over to court, or allowed to labor for county	498
law and fact decided by judge	499
conviction, form of judgment	500
discharge, form of judgment	501
costs, judgment for, against prosecutor	502
jeofails and amendments	503
appeal to circuit court; bond	504
transcript, &c. returned to court	505
subpœnas for witnesses	506
forfeiture of appeal bond; *alias* warrant of arrest to issue	507
arrest on warrant as on *capias*	508
appeal tried *de novo*; statement of charge	509
practice, evidence, &c., as in other cases	510
on conviction, and sentence to hard labor, additional term imposed for costs	511
fees, and how taxed	777-8
to whom accruing	779
of judge, paid by county	780
of prosecuting attorney	781
CRIME AGAINST NATURE—	
punishment of	63
proof of	642
COUNSEL—	
appointed for prisoner by court, when	619
allowed access to him at reasonable hours	619
furnished with list of jury and copy of indictment	619
DEATH—	
sentence of, when executed	369

DEATH—*Continued.* SECTION.
sentence of, by whom executed 370
where executed 371
officers and physicians present 372
counsel and relatives of prisoner 373
pregnancy of female convict 374-7
convict not executed, arrest of, &c 378-9
commutation to imprisonment 768-70

DECOYING CHILD, &c.—
punishment of 145
where prosecuted 398
form of indictment, No. 10, p. 207.

DEED—
forgery of, punishment of 156
taking, destroying, concealing, &c., punishment of 165
false certificate to, punishment of 53
forgery of certificate, punishment of 56
refusal of officer to take acknowledgment, &c 54

DEFACING CHURCHES, &c.—
punishment of 187

DEFACING TOMB-STONE, &c.—
punishment of 70

DEPOSITIONS—
when taken by defendant 675
State 677
affidavit, interrogatories, &c 676
taken as in civil cases, but not read if witness is able to attend, &c 678
when taken by consent on change of venue 656
of convict in penitentiary, how taken 367-8
taken by magistrate on complaint of public offense 429-30
application for search-warrant 828-9

DISTURBING FEMALES—
at public assembly, by profanity, &c., punishment 72
form of indictment, 590

DISTURBING RELIGIOUS WORSHIP—
punishment of 71
form of indictment, No. 24, p. 209.

DUEL—
challenge to fight, punishment of 11
killing is murder in second degree 113
publishing as coward for refusal to fight, punishment 12

EMBEZZLEMENT—
by clerk, agent, servant, or apprentice 171
common carriers 172
officers or agents of incorporated bank 173
private banker, factor, attorney, &c 174
State treasurer, or clerk in his office 103
tax collector 105
description of property in indictment 587
form of indictment, No. 53, p. 214.
receiving embezzled property 175
conviction of receiver before thief 176

ENDANGERING LIFE—
on railroad, by failure of engineer &c. to use proper precautions against accidents 135
throwing cars off track 136
malicious obstruction of 137-8
steamboat, by officer's negligence, &c 131
bursting boiler 132
racing with other boat 133
vessel, by overloading 134

	SECTION.
ENTICING APPRENTICE, &c.—	
punishment of	147
ESCAPE—	
by sheriff, or other officer, negligent	29
voluntary	28
convict, from jail or hard labor	35
through negligence of officer, when removed	250-254
while removed to penitentiary	323-4
from penitentiary	354-9
aiding felon to escape from jail	32
other prisoner to escape from jail	33
prisoner to escape from officer	34
forms of indictments, No. 46-7, p. 212-13.	
EVIDENCE—	
of abusive words, on trial of assault and battery, &c	646
accomplice, uncorroborated, not sufficient to convict of felony	641
intent to injure or defraud, sufficiency of	643
intent, means, results of act, &c	644-5
married woman, uncorroborated, not sufficient to convict of false personation of husband, &c	122
treason, sufficiency of	6
legal only, received by grand jury	553
See, also, DEPOSITIONS, WITNESSES.	
EXECUTION—	
for costs, in proceedings to keep the peace	423
on *habeas corpus*	748
under search-warrant	843
for fine and costs	214
EXTORTION—	
punishment of	52
form of indictment, No. 48, p. 213.	
FALSE PERSONATION—	
of bail, &c., punishment of	45
form of indictment, No. 52, p. 213.	
husband, and thereby having carnal knowledge of married woman	122
attempting same	123
obtaining property by	170
FALSE PRETENSES—	
obtaining property by, punishment of	168
form of indictment, No. 52, p. 213.	
signature to deed by, punishment of	169
FEES—	
in county court	777-81
how taxed and collected	778
to whom accruing	779
judge's fees paid by county	780
county prosecuting attorney	781
proceedings under *habeas corpus*	746
of attorney-general	793
clerk of circuit and city courts	786
how taxed and collected	787
constable	784
how taxed and collected	785
coroner	790
how taxed and collected	791
jurors, regular, and how paid	794
tales, and how paid	795
justice of the peace	782

FEES—*Continued.* SECTION.
of justice of the peace, how taxed and collected 783
sheriff 788
how taxed and collected, or paid 789
solicitor, and how paid 792
witnesses, same as in civil cases 796
when taxed against defendant or prosecutor 668
paid by county, and how 669-70
FELON—
absconding, reward offered for 797
aiding escape of 32
FELONY—
arrest for, when made by private person 451
bail, amount fixed by judge, and taken by sheriff 608, 690
compounding, punishment of 46
form of indictment, No. 49, p. 213.
conspiracy to commit, punishment of 50
conviction of, not had on testimony of accomplice alone 641
definition of 2
limitation of prosecution for 401-3
FENCES—
breaking down, punishment of 188
FINES—
assessed by jury, in prosecutions by indictment 209
not necessarily imposed, when 210
judgment confessed for 211
if not paid, &c., imprisonment or hard labor imposed 212
execution for 213
go to county, unless otherwise provided 216
injured party, under sections 185-9 191
not affected by change of venue 660
FIRE-ARMS—
selling or giving to minor, &c., punishment of 204
using, while fighting in public place, punishment of 129
form of indictment, No. 6, p. 207.
FIRE-HUNTING—
punishment of 203
FISH—
poisoning stream for, punishment of 206
FORCIBLE MARRIAGES, &c.—
punishment of 124
FORGERY—
of bank-note, check, &c. 93
official certificate 56
public seal 98
records, judgments, officer's return, &c. 55
will, deed, note, receipt, &c. 136
limitation of prosecution for 401
punishment of 100
description of instrument in indictment 581
uttering forged note &c. as true 94
FORNICATION—
living in, punishment of 57
form of indictment, No. 22, 209.
FORTUNE-TELLING—
punishment of 75
FRAUDS—
false affidavit, &c., to defraud insurer 155, 157
tax-list 108
samples, exhibiting 184

FRAUDS—*Continued.* SECTION.
fraudulent conveyance, making or receiving 158
form of indictment, No. 38, p. 211.
conversion of cotton samples 180
packing cotton 183
FRAUDULENT CONVEYANCE—See FRAUDS.
FREEDMEN—
competency of, as witnesses 680
testify in open court only 680
marriages of, with white persons, prohibited 61
FUGITIVES FROM JUSTICE—
delivered up on demand of executive 798
warrant of arrest issued by magistrate 799
arrest and commitment as in other cases 800
committed to await requisition 801
bailed, except in capital cases 802
discharged on bail, unless arrested under governor's warrant 803
jail fees paid in advance 804
forfeiture of undertaking of bail 805
at expiration of time, discharged, bailed, &c. 806
surrender discretionary, if prosecuted here 807
executive warrant, directed to whom 808
executed where and how 809
authority of arresting officer 810
confinement in jail when necessary 811
GAMING—
playing cards at public place 78
indictment, and evidence 584
form of indictment, No. 27, p. 209.
betting at cards, dice, gaming-table, &c. 80
form of indictment, No. 29, p. 210.
billiards, ten-pins, &c. 81
with minor, or apprentice 82
exhibiting gaming-tables, &c., ... 79
authority and duty of officer to arrest 87
indictment, and evidence 585
form of indictment, No. 28, p. 210.
permitting on premises, by retailers, &c. 83
renting room, tent, &c., for purpose 84
solicitor's authority to summon witness 85
examination of witness before grand jury 86
refusal of witness to testify 38
GOVERNOR—
may grant reprieves, commutations, and pardons 766
remit fines and forfeitures 766
lease penitentiary 265
power to pardon, &c., not affected by lease 271
may offer reward for absconding felon 797
must deliver up fugitive from justice 798
visit penitentiary annually 311
GRAND JURY—See JURORS AND JURY.
GRAND LARCENY—See LARCENY.
GUNPOWDER—
storing in city or town, punishment of 201
HABEAS CORPUS—
who entitled to writ 709
application for, made by petitioner on oath 710
contents of petition, and what it must state 711
if name unknown, description sufficient 712
addressed to whom 713

HABEAS CORPUS—*Continued.* SECTION.
addressed to whom, in absence of nearest judge 714
granted without delay 715
returnable before whom 715
form of writ 716
not to be disobeyed on account of mistake or want of form 717
notice to adverse party in civil case 718
solicitor or prosecutor in criminal case 719
precept to sheriff or constable 720
subpœnas for witnesses 721
service of writ, by whom made, and how 722
return, made when 723
form and contents of 724
body also produced, with warrant, &c. 725
when not produced, on account of sickness 726
when produced under precept, same as on return to writ. 727
denial of return; examination, adjournment, &c. 728
forfeiture of undertaking of bail pending examination ... 729
when party to be discharged; when remanded 730
when bailed, and how 731
excessive bail in civil case reduced 732
undertaking returned to court; forfeiture thereof 733
judgment, or commitment for contempt, not inquired into 734
when discharged if under legal process 735
when remanded or committed for public offense 736
after discharge, not again arrested 737
penalty for re-arrest, or refusal to discharge 738
refusal to give copy of warrant, &c. 739
obey writ 740
attachment against person refusing to obey 741
penalty for eluding writ 742
against defaulting witness 743
attendance of witness; how proved and taxed 744
costs discretionary how taxed and collected 745
before probate judge; how taxed, &c. 747
execution for; when returnable 748
fees of officers; how taxed and collected 746
guards summoned when necessary 749
compensation of; penalties, &c. 750
HARD LABOR FOR COUNTY—
under control of commissioners' court 217
includes work on public roads, bridges, &c. 218
authorizes hiring of convicts 218
character of labor to be determined by court 219
hiring of convicts, how made 220
bond of hirer, condition of 221–2
action on 223
maltreatment by hirer, punishment of 144
superintendent of public works, appointment of 224–5
compensation, and term of office 224
official oath 226
bond 227
action on 228
duties of 229
vacancy in office of; how filled 230
necessary supplies furnished by county 231
directions as to employment given by court 231
when convicts may be shackled 232
maltreatment of convicts by officer 143
conviction for two or more offenses 233
shortest term ten days 234
additional term imposed for costs 511

SECTION.

HOMICIDE—See MANSLAUGHTER; MURDER.
HORSE-RACING—
on public road, punishment of 148
HUNTING—
wild hogs 202
with fire 203
ILLEGAL TOLL—
by millers, punishment of 199
turnpike, bridge companies, &c. 200
IMPRISONMENT—See JAILS AND JAILORS; PENITENTIARY.
INCEST—
punishment of 60
INDICTMENT—
definition of 559
no distinction between, and presentment 560
what offenses are indictable 558
for misdemeanor, discretionary with grand jury 546
found by at least twelve grand jurors 554
endorsed 'true bill', by foreman 554
prosecutor's name, or 'no prosecutor', endorsed 555
on failure to make endorsement, foreman liable for costs as prosecutor 556
caption, and conclusion 561
statement of offense 562
name or description of defendant 563
venue, statement of 564
time alleged generally 565
fact unknown to jury, averment of 566-7
legal presumptions, and matters judicially known, not to be stated 568
statutory words not strictly pursued 569
offense described as at common law 570
special and general terms 571
description of public place 572
means, intent, &c., stated in alternative 573-4
joinder of offenses in same count 575
intent to injure or defraud, averment of 576
ownership of property, how averred 577
construction of words used 578
against accessory, same as principal 579
judgment pleaded without averring jurisdictional facts 580
for forgery, description of instrument destroyed or withheld 581
libel 582
retailing spirituous liquors 583
gaming 584
exhibiting gaming-tables 585
carrying concealed weapons 586
embezzlement, &c., description of property 587
larceny, description of animal stolen, &c. 588
perjury, and subornation of perjury 589
disturbing females at public assembly 590
forms in appendix (pp. 206—14) sufficient 591
formal defects not fatal 592
amended, with defendant's consent, on account of variance 593
or *nolle-pros.* entered, and new indictment preferred 594
when lost or destroyed, another preferred 595
on arrest of judgment, &c., another preferred 596
statute of limitations suspended in such cases 636, 597
filed in court, but not entered of record 598

INDICTMENT—*Continued.* SECTION.
not inspected, except by judge, clerk, or solicitor ... 598
disclosure of, by officer or grand juror, punishment ... 36
not quashed, dismissed, &c., without leave of court ... 599
copy served on defendant, if in custody ... 619
JAILS AND JAILORS—
imprisonment imposed by court ... 235
on two or more convictions ... 247
sheriff is jailor, and may appoint agent ... 236
who may be confined in jail ... 237
commitments and discharges filed and preserved ... 238
jail, prisoners, &c., delivered to successor ... 239
penalty for failure to deliver ... 240
men and women kept separate ... 241
support furnished by prisoner or jailor ... 242
necessaries furnished by county to insolvents ... 243
spirituous liquors not allowed ... 244
fees for victualling civil prisoners paid weekly ... 245
amount allowed ... 788
paid by prisoner on conviction ... 246
for fugitive from justice paid in advance ... 804
removal of prisoners, on account of fire ... 248
ill health ... 249
unsafe jail ... 253
guards summoned, to prevent escapes ... 250–1, 254
commitment to nearest jail, when county jail unsafe ... 252
list of prisoners certified by sheriff to circuit judge ... 255
United States prisoners kept like others ... 256
marshal liable for fees ... 257
convicts confined while being removed to penitentiary ... 321
escape of prisoner from jail, punishment of ... 35
aiding, punishment of ... 32–3
refusal to receive prisoner into jail ... 30–1
duty of grand jury to inspect ... 544
JURISDICTION—
of circuit court ... 382
city courts ... 383
county courts ... 384
justice of the peace ... 380
local, ... 393–401
generally, in county where offense was committed ... 393
when offense is commenced elsewhere, but consummated here ... 394
commenced here, but consummated elsewhere, ... 395
committed partly in different counties ... 396
on or near county boundary ... 397
forcible marriages, decoying child, kidnapping ... 398
bringing stolen property here ... 399
carrying stolen property into another county ... 400
JURORS AND JURY—
Formation of grand and petit juries ... 512–43
list of householders and freeholders procured by sheriff ... 512
jurors selected from, when and by whom ... 513
qualifications of jurors ... 513
who are exempt from jury duty ... 514, 310
list of selected persons filed in probate court ... 515
names separated, folded, and put in box ... 516
jurors for regular term; when drawn, how many, &c. ... 517
special term; petit jurors ... 518
manner of drawing jurors ... 519

JURORS AND JURY—*Continued.* SECTION.
names of jurors drawn to be deposited in separate box, and not drawn again until whole list is exhausted ... 520
list of jurors drawn delivered to clerk ... 521
venire issued by clerk ... 522
executed and returned, when and how ... 523
proceedings against defaulting juror ... 524–7
conditional judgment ... 524
notice of ... 526
absolute judgment ... 527
excuses allowed by court ... 528
names of jurors not attending or excused to be returned to jury box; exception ... 529
number of grand jury ... 530
deficiency, how supplied ... 531
foreman appointed by court ... 530
oath of ... 532
oath of other grand jurors ... 533
special grand jury at regular term ... 534
grand jury at special term ... 535
above provisions merely directory ... 536
challenge to array of grand jury not allowed ... 537
objections to grand jury; when and how taken ... 635-6
special juries organized in default of regular ... 538
neglect of officer in drawing or summoning jury, punishment of ... 539
drawing jury unfairly; punishment of ... 543
stocking jury; punishment of ... 25
bribing officer to stock jury ... 26
connivance of sheriff at such offense ... 27
bribery of juror ... 22–4
arrangement of petit juries for business ... 540
deficiency supplied by tales-men ... 541
oath of petit jurors ... 542
Powers and duties of grand jurors ... 544-57
inspection of jail, county offices, bonds, &c ... 544
entitled to free access to jail and offices ... 545
inquiry into indictable offenses ... 544
indictments for misdemeanors discretionary ... 546
juror must disclose offenses known to him ... 547
withdraw when interested ... 548
deficiency, supplied how ... 549
witnesses sworn by foreman or solicitor ... 550
certified list of, returned to court ... 550
subpœnas for, issued by whom ... 551
proceedings against defaulting ... 551
examination of, in gaming case ... 86
refusal of, to testify as to gaming ... 38
disclosure of testimony by ... 37
indictment by ... 36
attendance of solicitor ... 552
legal evidence only received ... 553
concurrence of twelve necessary to find indictment, 554
endorsement of prosecutor's name, or 'no prosecutor,' 555
penalty on foreman for failure to make endorsement, 556
disclosure of indictment by juror ... 36
testimony, when required of juror ... 557
Trial by jury—
when demanded in county court, proceedings ... 498
before justice of the peace ... 476

JURORS AND JURY—*Continued.* SECTION.
number of jurors summoned for capital offense 621
list served on defendant, when 619
of tales-men not served 620
penalty on defaulting juror 622
mistake in name no cause to quash or continue 623
tales-men summoned in such case, peremptorily challenged, but no list served 624
manner of drawing jury for trial 625
peremptory challenges by defendant 626
State 627
challenges for cause specified 628, 630-1
how proved 629-31
unfit person excused by court 632
aliens not allowed 633
examination of juror as witness 648
discharge of juror before retirement, on account of sickness 649
jury after retirement, for sickness, &c., 650
by adjournment 651
conviction of less offense than charged 647
verdict as to part of defendants 652
polling jury 653
Fees 794-5
of regular juror 794
tales juror 795
JUSTICE OF THE PEACE—
fees of, and how taxed and collected 782-3
jurisdiction of 384
may hold inquest, in absence of coroner 824
proceedings before 475-81
copy of accusation delivered on demand 475
if trial by jury demanded, bound over to court 476
parties and witnesses being present, trial to proceed unless continued 477
law and fact decided by justice without jury 478
forms &c. same as in county court 479
appeal to circuit or city court allowed; bond 480
tried in court *de novo* 481
limitation of prosecution, sixty days 405
KIDNAPPING—
punishment of 146
where prosecuted 398
LARCENY—
grand, definition, and punishment of 160
form of indictment, No. 40, p. 211.
from person, dwelling-house, or building on fire 161
forms of indictment, Nos. 41-3, p. 212.
petit, definition, and punishment of 162
on conviction of, judgment for value of property 163
description of stolen animal, in indictment for 588
of deed, conveyance, &c., punishment of 165
receiving stolen property, punishment of 164
conviction of receiver before thief 166
bringing stolen property into State 167
where prosecuted 399, 400
LIBEL—
punishment of 13
indictment, form and sufficiency of 582
refusal of printer to testify as to 14

	SECTION.
LICENSE—	
failure to take out, under revenue law	110
issuing, for marriage between white person and negro	62
retailing liquor without	76
LIMITATION—	
of prosecution for capital felonies	401
arson, forgery, grand larceny, &c	401
perjury, and subornation of perjury	402
other felonies	403
misdemeanors	404
before justice of the peace	405
statute of, suspended in certain cases, when new indictment is preferred	597, 636
LOTTERIES—	
unauthorized, punishment of	74
form of indictment, No. 26, p. 209.	
LYNCHING—	
punishment of	141
form of indictment, No. 17, p. 208.	
MALICIOUS MISCHIEF—	
breaking down fences, &c., punishment of	188
burning pine forest, punishment of	197
woods, punishment of	196
casting adrift boats, &c., punishment of	188
cutting down shrubbery, &c., punishment of	195
defacing churches, houses, &., punishment of	187
tomb-stone, monument, &c., punishment of	70
disabling animals, &c., punishment of	186
form of indictment, No. 56, p. 214.	
injuring mill-dam, canal, bridge, &c	190
telegraph line or post, punishment of	194
removing boundary marks or monuments, punishment of	192
mile-stone, sign-board, &c	193
obstructing railroads, punishment of	137-8
poisoning springs, wells, &c., punishment of	139
trespass to realty, cutting down trees, &c	189
fines go to injured party, when	191
MALTREATMENT—	
of convict at hard labor, by officer	143
hirer	144
MANSLAUGHTER—	
degrees of	117
punishment of	118
forms of indictment, Nos. 3-4, p. 206.	
with bowie-knife, punishment of	116
MARKS AND BRANDS—	
altering, punishment of	185
form of indictment, No. 55, p. 214.	
MARRIAGES—	
forcible, &c., punishment of	124
form of indictment, No. 9, p. 207.	
taking girl under fourteen, for purpose of, &c	125
between white person and negro, punishment of	61
issuing license for, punishment of	62
performing ceremony, punishment	62
persons within prohibited degrees	60
MAYHEM—	
definition, and punishment of	127
form of indictment, No. 13, p. 208.	

SECTION.

MILE-STONE—
removing, defacing, &c., punishment of 193
MILLS AND MILLERS—
illegal toll, punishment of 199
injuring dam, punishment of 190
exemption from jury duty 514
MISDEMEANOR—
definition of 3
conspiracy to commit, how punished 51
not specially provided for, punishment of 207
limitation of prosecution for 404-5
county court has jurisdiction of, concurrent with circuit and city court 383
MONUMENTS—
defacing, punishment of 70
removing, punishment of 192
MORTGAGE—
removing property under, punishment of 159
form of indictment, No. 39, p. 211.
MURDER—
degrees of 111
punishment of 112
degree to be found by jury 115
no limitation of prosecution for 401
form of indictment, No. 2, p. 206.
by convict in penitentiary 352
killing in duel is second degree at least 113
sudden rencounter, with concealed weapon, punishment 114
assault with intent, &c., punishment of 128
form of indictment, No. 14, p. 208.
MUTILATING DEAD BODIES—
punishment of 69
NEGROES—
marriages of, with white persons, punishment of 61
issuing license, or performing ceremony 62
competency of, as witnesses 680
testify only in open court 680
OATH—
false, see title PERJURY.
of foreman of grand jury 532
other grand jurors 533
petit jurors 542
judge of county court 387
officers of penitentiary 304
superintendent of public works of county 226
OFFICIAL BONDS—
duty of grand jury to examine 544
of judge of county court 388
hirer of convict at hard labor 221-2
action on 223
superintendent of public works of county 227
action on 228
lessee of penitentiary 272
failure to give 273
additional required, when 278
warden of penitentiary 287
OFFENSES—See PUBLIC OFFENSES.
OYSTERS—
catching otherwise than with tongs, punishment of 205

PARDON—
power of governor to grant ... SECTION. 766
not affected by lease of penitentiary ... 271
record of, kept ... 767
conviction after ... 261-2
postponement of sentence to make application for ... 775
PENITENTIARY—
Sentence of imprisonment ... 258-64
fixed by court ... 258
may be for life, if no limit prescribed ... 259
on two or more convictions ... 260
conviction after pardon or expiration of term ... 261
when first conviction is elsewhere ... 262
effect of sentence on offices and trusts ... 263
when for life ... 264
commuted sentence ... 326
Lease ... 265-84
discretionary with governor ... 265
pardoning power not affected by ... 271
proposals, advertisement for ... 266
contents of ... 267
opening of ... 268
highest accepted, if unobjectionable ... 269
selection between equal ... 270
bonds to be given by lessee ... 272
failure to give ... 273
property &c., inventoried by inspectors, and delivered to lessee ... 274
duties of lessee as warden ... 275
additional ... 276
compensation of inspectors paid by lessee ... 277
additional bonds, when required of lessee ... 278
failure to give ... 279, 283
death of lessee terminates lease ... 280
inspectors to take control, &c. ... 281
salaries of officers paid by State ... 281
rent due until ... 283
re-lease discretionary with governor ... 282
advertisements, &c., as before ... 282
new lease as before ... 284
Organization; powers, duties, and compensation of officers ... 285-311
officers specified ... 285
oath of ... 304
exempt from road and jury duty ... 310
warden, appointment and term of office ... 286
authority of ... 288
duties of ... 289
official bond of ... 287
salary of ... 305
vacancy, how filled ... 290
deputy warden; appointment and authority of ... 291
salary of ... 305
inspectors; appointment, and term of office ... 292
president of board ... 293
minutes of proceedings to be kept ... 294
adopt rules and regulations ... 295
visits to penitentiary ... 296
annual report to governor ... 297
may remove convicts in case of contagious diseases, &c. ... 298

PENITENTIARY—*Continued.* SECTION.
inspectors; salary 306
paid by lessee 277
physician; appointment, and removal of 299
duties of 301
salary of 307
vacancy, how filled 300
guards; appointment and removal of 302
salary of 308
supplied with public arms 303
governor to visit annually 311
official books and papers kept on file 309
Removal of prisoners to 312-27
convicts removed from jail, by sheriff, within five days after adjournment of court 312
failure to remove punishable as misdemeanor 313
guards summoned to assist 314-5
under control of sheriff 318
refusal to act as, punishable as misdemeanor, 316
route to be travelled 317
deputy may act as sheriff 319
officer and guards privileged from arrest 320
convicts confined in jail en route 321
delivery of convicts to warden 322
escape en route, by officer or guard 323
convict 324
fees of sheriff for removal, and how paid 788-9
removal of convict on reversal of judgment 325
United States prisoners 327
convicts imprisoned under commuted sentence 326
Police; sanitary regulations; punishments, and escapes 328-62
description of convict taken and recorded 328
person and baggage searched 328
warden to take charge of money, &c 329
quarantine performed 330
clothes of convict preserved or sold by warden, 331
sanitary regulations, cleanliness, &c 332
uniform of convicts 333
Bible furnished to convicts 334
diet, and meals 335
letters, and communications with friends 336
spirituous liquors prohibited 337
men and women kept separate 339
labor, convicts kept at 338
voluntary extra, allowed 340
outside of penitentiary 341
conversation between convicts 338
and officers 343
confinement by night 338
solitary 344
diet during 345
other punishments 346
punishment reported to inspectors 347
wards, and turnkeys 342
sick convict removed to hospital 348
insane convicts 349
death of convict; inquest 350
discharge of convict 351
murder by convict 352
assaults, and conspiracies by 353

PENITENTIARY—*Continued.*
SECTION.
escapes, and attempts to escape 354
convicts confined until trial 355
aiding convict to escape 356
voluntary escape by officer 357
United States prisoners, escapes by 358
escaped convicts, proceedings for recapture 359
violation of duty by officer 360
evidence on trial of above offenses 361
rules printed, explained to convicts, &c. 362
deduction of time on account of good conduct 774
remission of imprisonment, on recommendation of inspectors 773
Service of process, and testimony of convicts 363-8
answer in chancery 364
service of process 363
testimony in civil suit 367
criminal case, for State 365-6
defendant 368
PERJURY—
on trial for felony, punishment of 17
in other cases, punishment of 18
forms of indictments, Nos. 44, 45, p. 212.
sufficiency of indictment for 589
PINE FOREST—
burning negligently, how punished 198
willfully, how punished 197
PLEADINGS—
pleading guilty 618
refusing to plead 617
pleas in abatement; how verified 634
to organization of grand jury 635-6
plea, character of, determined how 637
POISONS AND POISONING—
selling poisons to minor, apprentice, &c. 140
without label on phial, &c. 140
homicide by poisoning, is murder in first degree 111
attempts to poison, punishment of 128
poisoning spring, well, &c., punishment of 139
form of indictment, No. 32, p. 210.
stream for fish 206
POLLING JURY—See JURORS and JURY.
PRESENTMENT—
no distinction between indictment and 560
PROCEEDINGS IN CRIMINAL CASES—
to keep the peace 407-27
preliminary, on complaint 428-74
before justice of the peace 475-81
in county court 482-511
circuit and city courts 512-660
PROSECUTING ATTORNEY—
appointment, and duties of 391
fees of, and how paid 781
PROSECUTION—
commencement of 406
limitation of 401-05
PROSECUTOR—
liability for costs, in county court 502
circuit or city court 556
name of, endorsed on indictment 553

SECTION.

PSYCHOLOGY—
practicing for profit, punishment of 75
PUBLIC OFFENSES—
definition of 1
exception as to penalties recoverable by *qui-tam* action 4
against State sovereignty 5–7
public peace 8–16
justice 17–56
morality and decency 57–88
health 89–92
currency and revenue 93–110
person 111–48
property, public or private 149–98
miscellaneous 199–207
PUNISHMENTS—
specification of legal 208
fines 209–15
hard labor for county, ... 217–34
imprisonment in county jail, ... 235–57
penitentiary, ... 258–368
death by hanging, ... 369–79
commutation of, ... 768–72
for offenses heretofore committed, ... 768–9
hereafter committed, ... 770
imprisonment to hard labor 771
commuted sentence recorded, &c. 772
QUI-TAM ACTIONS—
penalties recoverable by 4
RAILROADS—
negligence of conductor, &c., how punished, ... 135–6
obstructing maliciously, how punished, ... 137–8
RAPE—
punishment of, ... 119
proof of, ... 642
form of indictment, No. 7, p. 207.
assault with intent to commit, punishment of, ... 128
form of indictment, No. 15, p. 208.
carnal knowledge, by administering drugs, &c. 120
of girl under fourteen years, ... 121
form of indictment, No. 8, p. 207.
wife by false personation of husband, ... 122
attempt to have, ... 123
compelling woman to marry or be defiled, ... 124
form of indictment, No. 9, p. 207.
taking girl for purpose of prostitution, &c., ... 125
RECEIVING STOLEN PROPERTY—
punishment of, ... 164, 175
justice of the peace has jurisdiction of, ... 384
conviction of receiver before thief, ... 166, 176
REMOVING MORTGAGED PROPERTY—
punishment of, ... 159
form of indictment, No. 39, p. 211.
REPRIEVES—
governor's power to grant, ... 766
RESISTING PROCESS—
punishment of, ... 39, 42
RETAILING SPIRITUOUS LIQUORS—
without license, punishment of, ... 76
form of indictment, (No. 30, p. 210.) 583

RETAILING SPIRITUOUS LIQUORS—*Continued.* SECTION.
selling liquor to minor, apprentice, &c., - - - - - 77
form of indictment, No. 31, p. 210.
gaming on retailers' premises, - - - - - - - 83
RIOTS, AND ROUTS—
punishment of, - - - - - - - - - 10
form of indictment, No. 20, p. 209.
ROBBERY—
punishment of, - - - - - - - - - - 126
form of indictment, No. 12, p. 208.
assault with intent to rob, punishment of, - - - - - 128
SABBATH-BREAKING—
punishment of, - - - - - - - - - 73
justice of the peace has jurisdiction of, - - - - - - 384
SEARCH-WARRANTS—
definition of, - - - - - - - - - - 825
issued on what grounds, - - - - - - - - - 826
probable cause, and affidavit, - - - - - - - - 827
examination of plaintiff and witnesses on oath, - - - - 828
contents of depositions, and what they must state, - - 829
warrant to issue if probable cause shown, - - - - - 830
form of, - - - - - - - - - 831
executed by whom, - - - - - - - - 832
when, - - - - - - - - - 833
how; authority of officer, - - - 834–5
receipt given for property, - - - - - - - - 836
warrant returned in ten days, or void, - - - - - - 837
return made to magistrate; copies to parties, - - - - 838
how property to be disposed of by magistrate, - - - - 839
when restored to defendant, - - - - - - - - 841
contest of facts before magistrate, - - - - - - - 840
proceedings returned to court, when, - - - - - - 842
costs; when taxed against plaintiff, - - - - - - 843
person of defendant searched for weapons, - - - - - 844
suing out maliciously, punishment of - - - - - - 43
fees, of justice, for issuing. - - - - - - - - 782
constable or sheriff, for executing, - - - - 784, 788
SHERIFF—
is chief conservator of peace, - - - - - - - 407
jailor of county, - - - - - - - - - 236
fees of, and how paid, - - - - - - - - - 488–9
must attend terms of county court, - - - - - - 390
SHOOTING—
across public road, how punished, - - - - - - - 148
SODOMY—
punishment of, - - - - - - - - - - 63
SOLICITOR—
attendance of, on grand jury, - - - - - - - - 552
authority of, to summon witnesses, - - - - - - 86, 551
fees of, - - - - - - - - - - - - 792
SPIRIT-RAPPINGS—
practicing for profit, how punished, - - - - - - - 75
SPIRITUOUS LIQUORS—
retailing without license, punishment of, - - - - - 76
selling or giving to minor, apprentice, &c., - - - - - 77
probibited in jail, - - - - - - - - - 244
penitentiary, - - - - - - - - - 337
STEAMBOATS—
accidents on, from officer's negligence or want of skill, - 131
by bursting boiler, - - - - - - - - 132
racing, - - - - - - - - - 133

SECTION.

STOCKING JURY—
punishment of, - - - - - - - - - - - 25–7
TAX-COLLECTOR—
embezzlement by, how punished, - - - - - - 105
TELEGRAPH—
injuring line or post, punishment of, - - - - - 194
TEN-PINS—
betting at, punishment of, - - - - - - - - - 81
THREATENING LETTERS—
sending, how punished, - - - - - - - - - 13
TREASON—
definition of, - - - - - - - - - - - - 5
proof of, - - - - - - - - - - - - - 6
punishment of, - - - - - - - - - - - 7
TRESPASS—
after warning. how punished, - - - - - - - 16
on lands, cutting down trees, &c., - - - - - - 189
TRIAL—
without jury, in county court, - - - - - - - 499
before justice of the peace, - - - - - 478
by jury, if demanded, bound over to circuit court, - 476, 498
standing mute, or refusing to plead, - - - - - 617
pleading guilty, - - - - - - - - - - - 618
counsel appointed by court, when, - - - - - - 619
service of list of jury and copy of indictment. - - - 619
joint or several, in discretion of court, - - - - - 638
discharge of defendant, to be witness for State, - - - 639
co-defendant, - 640
conviction of less offense than charged, - - - - - 647
verdict and judgment as to part of defendants, - - 652
removal of, on defendant's application, - - - - - 654
to nearest county, and but once, - - - - 655
depositions, and payment of mileage, - - 656
transcript, subpœnas, &c., - - - 657–8
trial had on transcript; *certiorari*, - - - 659
fines, forfeitures, fees, &c., not affected by, - 660
UNLAWFUL ASSEMBLY—
punishment of, - - - - - - - - - - - 9
sheriff's duty to suppress, - - - - - - - - 407
VAGRANCY—
definition, and punishment of, - - - - - - - 88
VIOLATING GRAVES—
removing dead body, how punished, - - - - - - 65
exception as to physicians, - - - - - - - 66
form of indictment, No. 25, p. 209.
buying such bodies, how punished - - - - - - 67
breaking open graves to steal, &c., - - - - - - 68
mutilating dead bodies, - - - - - - - - 69
defacing tomb-stone, &c., - - - - - - - - 70
VIOLATING SABBATH—See SABBATH-BREAKING.
WARRANT OF ARREST—See ARREST.
WITNESSES—
bound over to court on preliminary proceedings, - - 466
form of undertaking in such case, - - - 467–8
surety for appearance, required when, - - - - - 469
commitment of, on default of undertaking, &c., - - 471
subpœna not issued before arrest or bail, - - - - 661
for defendant's, issued by clerk, - - - - 662
State, issued by clerk or solicitor, - - - 663–4
served as in civil cases, - - - - - - 665
privilege from arrest, - - - - - - - - - 665

WITNESSES—*Continued.*

	SECTION.
must attend on Wednesday or second Monday,	666
summoned but once, except on reversal,	667
fees of, same as in civil cases,	668
when taxed against defendant or prosecutor,	668
paid by county,	669
certificate, and how payable,	679
how many allowed,	671
default; proceedings on,	672-4
competency of, as affected by interest,	679
freedmen as, and how may testify,	680
before grand jury, sworn by foreman or solicitor,	550
certified list of, returned to court,	550
subpœnas for, issued by whom,	551
proceedings against defaulting,	551
examination of, in gaming case,	86
refusal of, to testify as to gaming,	38
disclosure of testimony by,	37
indictment by,	36

WRIT OF ARREST—See ARREST.

4073

4.073-7
14 (13)